

# EXHIBIT E

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

~~Eloise Aekiss~~ James Milstead, et al.,

Plaintiffs,

v.

GENERAL MOTORS LLC, et al.,

Defendant.

Case No. 4:21-cv-06338-JST

**SECOND AMENDED CLASS ACTION  
COMPLAINT**

**JURY TRIAL DEMANDED**

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1 Plaintiffs, individually and on behalf of all others similarly situated (the “Class” ~~or~~  
 2 ~~“Classes”~~), 1. allege the following against General Motors LLC, General Motors Holdings LLC,  
 3 and General Motors Company (collectively, “Defendants,” “GM,” or “New GM”) based, where  
 4 applicable, on personal knowledge, information and belief, and the ~~pre-filing~~ investigation of  
 5 counsel and their experts.

6 Plaintiffs file this ~~Amended Complaint as a matter of course, as no responsive pleading or~~  
 7 ~~Rule 12 motion has been served. See Fed. R. Civ. P. 15(a)(1)(B)~~ complaint pursuant to the Court’s  
 8 Order granting leave (Dkt. 177 at 25), and attach hereto as Exhibit E a redline comparison  
 9 between this complaint and the previous pleading for the Court’s reference.

## 10 I. INTRODUCTION

11 ~~1. Car crashes kill or seriously injure hundreds of thousands of people every year. Because~~  
 12 ~~of this risk, the federal government requires automobile manufacturers to include critical safety~~  
 13 ~~features—seatbelts and airbags—in all vehicles sold in the United States. This life-saving~~  
 14 ~~equipment has been mandatory in passenger vehicles since 1997. See 49 U.S.C. § 30127.~~

15 1. ~~2.~~ This case involves a dangerous defect that compromises ~~these~~ critical safety  
 16 systems in millions of GM trucks and SUVs. When working properly, during a frontal crash of  
 17 sufficient severity, ~~the a vehicle’s~~ seatbelts should tighten to hold the vehicle occupants in place,  
 18 and the airbags should inflate to protect them from hard impacts. A defect in ~~GM trucks and~~  
 19 ~~SUVs~~ the Class Vehicles, however, can prevent seatbelt tightening and airbag deployment during  
 20 certain types of crashes, leaving vehicle occupants without protection exactly when they need it  
 21 most.<sup>1</sup>

22 2. ~~3.~~ The defect is contained in the ~~vehicles~~ software that governs the Class Vehicles’  
 23 airbag control unit. This unit, which is referred to by GM and herein as an “SDM” or “Sensing  
 24 also known as the Sending and Diagnostic Module.” The defect itself is referred to herein as the  
 25 “SDM Calibration Defect.” (“SDM”), is a small computer connected to sensors placed

27 <sup>1</sup> The “Class Vehicles” include all vehicles in the United States that contain the SDM Calibration  
 28 Defect that were (1) manufactured, sold, distributed, or leased by Defendants or (2)  
manufactured, sold, distributed, or leased by General Motors Corporation (“Old GM”) and  
purchased or leased by Plaintiffs or a Class member after July 10, 2009.

throughout a vehicle. These sensors monitor vehicle performance and tell the SDM when they detect irregular behavior.

~~The SDM is a small computer connected to sensors placed throughout 4. the vehicle. These sensors tell the SDM when they detect irregular behavior and, based on these signals, the SDM will fire the airbags and tighten seatbelts when needed in a crash.~~

3. 5-In Based on the signals it receives from these sensors, the SDM should fire the airbags and tighten seatbelts when needed in a crash of sufficient severity. But in the Class Vehicles, GM-calibrated the software program that controls the SDM to prevent-is calibrated in such a way that it prevents airbag and seatbelt deployment just 45 milliseconds after a crash has begun.<sup>1</sup> This has serious repercussions in real-world accidents that ~~last longer than~~ need seatbelt and airbag deployment after 45 milliseconds—such as accidents that involve multiple impacts, or that start and then increase in severity over ~~a period of time—in time,~~ before the SDM has reset—in which the airbags and seatbelts in the Class Vehicles can fail. Put simply, GM decided to install a calibration that can and does prematurely close the time window to engage airbags and seatbelts in a crash, putting occupants of the Class Vehicles in serious danger.

4. 6-GM made the decision Old GM knew about the effect of this calibration and related dangers from the very outset, when it decided to prematurely close the time window for airbag deployment in the Class Vehicles in the late 1990s.<sup>2</sup> In the process, overriding the Old GM overrode serious concerns ~~of from~~ a team from ~~Delphi (then operating as~~ Delco Electronics). ~~A~~ (later called Delphi Electronics, now known as Aptiv), including engineering manager, Chris Caruso. Mr. Caruso and a team of software engineers from Delco—which designed the base SDM software program used in the Class ~~Vehicles—expressly Vehicles and other GM vehicles—~~

<sup>1</sup> ~~The “Class Vehicles” include all vehicles in the United States that contain the SDM Calibration Defect that were (1) manufactured, sold, distributed, or leased by Defendants or (2) manufactured, sold, distributed, or leased by Old GM and purchased or leased by Plaintiffs or a Class member after July 10, 2009.~~

<sup>2</sup> As detailed further below, Old GM filed for bankruptcy in 2009, which led to the creation of the contemporary GM entities named as Defendants herein.

1 expressly warned Old GM in or about 1999 that preventing airbag and seatbelt deployment after  
2 45 milliseconds was a reckless and dangerous design decision.<sup>2</sup>

3 5. Old GM's trucks group, which was in charge of the design and development for all  
4 GM trucks and SUVs, ignored this warning and insisted on using ~~a~~its defective SDM calibration  
5 ~~that shuts~~ strategy to shut off the ability to deploy airbags and seatbelts after 45 milliseconds (the  
6 "SDM Calibration Defect"). Given their significant concerns, Mr. Tellingly, a separate team in  
7 charge of design and development for GM cars rejected this approach after hearing the Delco  
8 team's concerns and included a much longer window (150 milliseconds) for the airbags and  
9 seatbelts to deploy in a crash for the vehicles they designed. Caruso and the Delco team insisted  
10 that Old GM sign a disclaimer of Delco's liability for the modified algorithm as used in GM  
11 trucks and SUVs.

12 6. Tellingly, a separate team in charge of the design and development for GM cars  
13 rejected GM Trucks' approach after hearing the Delco team's concerns. GM cars included a much  
14 longer window (at least two to three times longer than GM Trucks, approximately 100-150  
15 milliseconds) for the airbags and seatbelts to deploy in a crash for the vehicles they designed. GM  
16 Trucks also ignored the cars group's views. On information and belief, starting in or about 1999,  
17 GM (and Old GM before it) installed the defective SDM calibration in all of the Class Vehicles,  
18 at least through model year 2018.

19 7. When ~~it was formed in 2009,~~ General Motors, LLC ("GM LLC") was formed in  
20 2009, it acquired books, records, and personnel from Old GM that reflected this reckless decision  
21 to use the dangerous SDM calibration in ~~its~~ GM trucks and SUVs. Despite this acquired  
22 knowledge, GM continued to use Delco SDMs in its vehicles and, on information and belief,  
23 continued to use the defective software calibration associated with those Delco SDMs as well.

24 8. Since it was formed in 2009, GM has ~~continued to gain~~ gained still more  
25 knowledge of the defect through ~~individual~~ personal injury lawsuits, consumer complaints, and its  
26 own investigations into serious crashes where the airbags and seatbelts failed ~~to deploy~~ in the  
27

28 <sup>2</sup> ~~As detailed further below, Old GM filed for bankruptcy in 2009, which led to the creation of the~~  
~~contemporary GM entities named as Defendants herein.~~



1 Class Vehicles. As an example, documents in a personal-injury lawsuit filed against GM LLC in  
 2 2011 describe the ~~defect~~ SDM Calibration Defect in detail and relate Old GM's reckless decision  
 3 to use it. *See* § IV.C.3.a, *infra*. Chris Caruso, the engineer who originally objected to the  
 4 defective algorithm in the first instance, has gone on to serve as an expert in a number of these  
 5 cases.

6 9. While the use of the defective shutoff strategy began some twenty years ago, it  
 7 remains a real and immediate risk to Plaintiffs and Class members today. Indeed, GM settled yet  
 8 another personal injury lawsuit about this SDM calibration defect *just last month*, in December  
 9 2022. Discovery in that case revealed the defect was included in a model year 2018 GM SUV.  
 10 This is direct evidence that GM Trucks continued to use the defective strategy in its vehicles for  
 11 many years (decades) after its introduction in approximately 1999. *See* § IV.C.3.a, *infra*.

12 10. ~~9.Further~~Finally, publicly available consumer complaints to the National Highway  
 13 Traffic and Safety Administration ("NHTSA") detail more than *eight hundred* instances where  
 14 the airbags and/or seatbelts suspiciously failed in the Class Vehicles during frontal crashes. Many  
 15 of these reports specifically state that GM knew about and investigated the crash after the  
 16 reported airbag failures. A separate NHTSA dataset indicates that, from 1999 to ~~the present~~ 2021,  
 17 at least 1,298 people were killed or injured in a frontal collision in which the airbags did not  
 18 deploy in one of these vehicles. *See* IV.C.3.b, *infra*.

19 11. ~~10.~~ Despite its knowledge of the defect and its impact on safety, GM has concealed  
 20 the defect and failed to recall or repair the Class Vehicles, ~~presumably to avoid and has thereby~~  
 21 avoided the significant costs ~~and~~ inconveniences, and reputational harms of recalling millions  
 22 of ~~vehicle~~ trucks and SUVs. GM has hidden the ~~defect~~ Defect despite its obligation to disclose it,  
 23 misrepresented the Class Vehicles to be safe, and continued to sell them to consumers.

24 12. ~~11.~~ Because of GM's failure to disclose the truth, consumers continue to purchase  
 25 and drive Class Vehicles with the SDM Calibration Defect every day—on road trips, commutes,  
 26 and weekend errands alike—unaware that their airbags and seatbelts may not ~~operate in a~~  
 27 ~~prolonged frontal crash~~ work in certain serious crashes when they need them. This lawsuit seeks  
 28

redress from GM for the damages incurred when Plaintiffs and proposed Class members paid for vehicles with a safety system that may fail them in life-threatening collisions.

## II. PARTIES

### A. Plaintiffs

~~1. For ease of reference, the following chart identifies the representative Plaintiffs and the state(s) in which they reside and purchased their Class Vehicles:~~

| <b>Representative Plaintiff</b> | <b>State of Purchase/Lease</b> | <b>State of Residence</b> |
|---------------------------------|--------------------------------|---------------------------|
| Eloise Aekiss                   | GA                             | GA                        |
| Rachel Bailey                   | MI                             | MI                        |
| Richard Baker                   | MD                             | MD                        |
| Kerry Batman                    | KS                             | KS                        |
| Ric Batten                      | TX                             | TX                        |
| George Bayer                    | MI                             | MI                        |
| Jerome Blatt                    | IN                             | MN                        |
| Ira Bondsteel                   | TX                             | TX                        |
| Adam Brown                      | NY                             | NY                        |
| David Casey                     | NC                             | NC                        |
| Christina Colatristano          | DE                             | DE                        |
| Delbert Dehne                   | IL                             | IL                        |
| Ashley Dheel                    | WA                             | WA                        |
| Travis Dieter                   | ID                             | ID                        |
| Greg Douthwaite                 | WI                             | WI                        |
| Ed Driggers, Jr.                | GA                             | GA                        |
| Stephen Duncan                  | AK                             | AR                        |
| Douglas Dye                     | VA                             | VA                        |
| William Endress                 | PA                             | NJ                        |
| Lee Ford                        | NJ                             | NJ                        |
| William Free                    | FL                             | FL                        |
| Lisa Gerould                    | SC                             | SC                        |
| Alisha Gonzalez                 | MI                             | MI                        |
| Harryette Gosa                  | MS                             | MS                        |
| Rex Hartman                     | PA                             | PA                        |
| Judy Haviland                   | MI                             | MI                        |
| Bruce Heise                     | PA                             | PA                        |
| Zeckery Henslee                 | MI                             | MI                        |
| John Hickey                     | WV                             | WV                        |
| Kimberly Hickle                 | MN                             | MN                        |
| Randy Holdren                   | IL                             | FL                        |

|    | <b>Representative Plaintiff</b> | <b>State of Purchase/Lease</b> | <b>State of Residence</b> |
|----|---------------------------------|--------------------------------|---------------------------|
| 1  | Kevin Hopkins                   | NV                             | NV                        |
| 2  | Kara Hummel                     | WA                             | WA                        |
| 3  | Aaron Jackson                   | AL                             | AL                        |
| 4  | David James                     | IN                             | IN                        |
| 5  | Gregory Juskiewicz              | OH                             | OH                        |
| 6  | ShaVon Keith                    | NV                             | GA                        |
| 7  | Jason Klinger                   | NC                             | NC                        |
| 8  | Debra Knerr                     | VA                             | TN                        |
| 9  | Clarise Knight                  | FL                             | FL                        |
| 10 | Andrew Lawson                   | SC                             | SC                        |
| 11 | Eric Leeds                      | VA                             | NJ                        |
| 12 | Toni Lowe                       | FL                             | FL                        |
| 13 | Stephen Loyd                    | TN                             | AL                        |
| 14 | Angelica Mar                    | IL                             | IL                        |
| 15 | Allan Martin                    | LA                             | LA                        |
| 16 | Michael Merkley                 | ID                             | ID                        |
| 17 | Allan Miles                     | MS                             | MS                        |
| 18 | Stephen Miles                   | OR                             | OR                        |
| 19 | James Milstead                  | CA                             | CA                        |
| 20 | Ira Nash                        | VA                             | VA                        |
| 21 | Patrick O'Connor                | NY                             | NY                        |
| 22 | Jorge L. Orihuela               | NJ                             | NJ                        |
| 23 | Gary Owens                      | TN                             | TN                        |
| 24 | Larry Paetzold                  | TX                             | TX                        |
| 25 | Ramiro Pereda                   | CA                             | CA                        |
| 26 | Delana Petersen                 | UT                             | UT                        |
| 27 | Frank Pignone                   | NY                             | NY                        |
| 28 | Dolly Price                     | MO                             | KS                        |
|    | Michael Romania                 | PA                             | PA                        |
|    | Donald Roxberry                 | OK                             | OK                        |
|    | Lakiesha Shears                 | CO                             | CO                        |
|    | David Staleup                   | AR                             | AR                        |
|    | Larry Swafford                  | GA                             | GA                        |
|    | Brian Swann                     | OH                             | AL                        |
|    | Joseph Sweat                    | GA                             | GA                        |
|    | David Taylor                    | AL                             | AL                        |
|    | Walter Tooson                   | OH                             | OH                        |
|    | Richard Vargas                  | CA                             | CA                        |
|    | Warren Whitsey                  | IN                             | IN                        |
|    | Denise Wilson                   | MS                             | MS                        |

|                                 |                                |                           |
|---------------------------------|--------------------------------|---------------------------|
| <b>Representative Plaintiff</b> | <b>State of Purchase/Lease</b> | <b>State of Residence</b> |
| Carl Wurmlinger                 | MI                             | MI                        |

13. ~~2.~~ Plaintiff ~~Eloise Aekiss~~ Plaintiff James Milstead (“Plaintiff” for the purposes of this paragraph) is an individual residing in ~~Ellaville~~ Oxnard, ~~GA~~ CA. ~~In or around summer 2015~~ On September 11, 2021, Plaintiff purchased a ~~pre-owned 2010 GMC Terrain SLE~~ 2012 Avalanche (for purposes of Plaintiff’s allegations, the “Class Vehicle”) from ~~a used car dealership in Georgia. At the time,~~ Escondido Auto Super Center in Escondido, CA. On information and belief for the reasons set forth herein, GM installed the SDM calibration defect—which shut off the vehicle’s ability to deploy airbags in a crash after 45 milliseconds—in Mr. Milstead’s truck during the manufacturing process, and Mr. Milstead’s truck contained the SDM calibration defect at the time he purchased the vehicle. At the time of purchase, Plaintiff reasonably expected that the airbags and seatbelts would function in the event of a crash and had no way of knowing that it contained a dangerous and defective SDM calibration that could cause the airbags and seatbelts to fail during a crash. To the contrary, before acquiring the vehicle, Plaintiff viewed or heard commercials and reviews through television, radio, and the internet that touted the safety and reliability of Plaintiff’s vehicle and GM vehicles generally. GM concealed the existence of the defective SDM calibration from consumers including Plaintiff. Plaintiff would not have purchased the Class Vehicle, or would have paid less for it, if Defendants did not conceal material information about the defective SDM calibration.

14. ~~3.~~ Plaintiff ~~Rachel Bailey~~ Arthur Ray (“Plaintiff” for the purposes of this paragraph) is an individual residing in ~~Saginaw~~ Brentwood, ~~MI~~ California. ~~On~~ In or around 2020 January 22, 2010, Plaintiff purchased a ~~2011~~ new 2010 GMC Terrain SLT Sierra 2500 (for purposes of Plaintiff’s allegations, the “Class Vehicle”) from ~~Cliff’s Chevrolet~~ Concord GMC, an authorized dealership located in ~~Adrian~~ Concord, ~~MI~~ California. ~~At the time,~~ On information and belief for the reasons set forth herein, GM installed the SDM Calibration Defect—which shut off the vehicle’s ability to deploy airbags in a crash after 45 milliseconds—in Mr. Ray’s truck during

1 the manufacturing process, and Mr. Ray's truck contained the SDM Calibration Defect at the time  
 2 he purchased the vehicle. At the time of purchase, Plaintiff reasonably expected that the vehicle's  
 3 airbags and seatbelts would function in the event of a crash and had no way of knowing that it  
 4 contained a dangerous and defective SDM calibration that could cause the airbags and seatbelts to  
 5 fail during a crash. To the contrary, before acquiring the ~~vehiele~~Vehicle, Plaintiff viewed or heard  
 6 commercials and reviews through television, ~~radio,~~ and the internet that touted the safety and  
 7 reliability of Plaintiff's vehicle, including its "Five Star" safety rating, and GM vehicles  
 8 generally. GM concealed the existence of the defective SDM calibration from consumers  
 9 including Plaintiff. Plaintiff would not have purchased the Class Vehicle, or would have paid less  
 10 for it, if Defendants did not conceal material information about the defective SDM calibration.

11 ~~4. Plaintiff Richard Baker ("Plaintiff" for the purposes of this paragraph) is an~~  
 12 ~~individual residing in Ijamsville, MD. On or around 2012, Plaintiff purchased a 2012 GMC~~  
 13 ~~Terrain (for purposes of Plaintiff's allegations, the "Class Vehicle") from Ideal Motors in~~  
 14 ~~Frederick, MD. At the time, Plaintiff reasonably expected that the airbags and seatbelts would~~  
 15 ~~function in the event of a crash and had no way of knowing that it contained a dangerous and~~  
 16 ~~defective SDM calibration that could cause the airbags and seatbelts to fail during a crash. To the~~  
 17 ~~contrary, before acquiring the vehicle, Plaintiff viewed or heard commercials and reviews through~~  
 18 ~~television, radio, and the internet that touted the safety and reliability of Plaintiff's vehicle and~~  
 19 ~~GM vehicles generally. GM concealed the existence of the defective SDM calibration from~~  
 20 ~~consumers including Plaintiff. Plaintiff would not have purchased the Class Vehicle, or would~~  
 21 ~~have paid less for it, if Defendants did not conceal material information about the defective SDM~~  
 22 ~~calibration.~~

23 ~~5. Plaintiff Kerry Batman ("Plaintiff" for the purposes of this paragraph) is an~~  
 24 ~~individual residing in Ashland, KS. In or around 2013, Plaintiff purchased a 2013 Chevrolet~~  
 25 ~~Pickup 2500 HD (for purposes of Plaintiff's allegations, the "Class Vehicle") from Meguirk~~  
 26 ~~Dealership in Dodge City, KS. At the time, Plaintiff reasonably expected that the airbags and~~  
 27 ~~seatbelts would function in the event of a crash and had no way of knowing that it contained a~~  
 28 ~~dangerous and defective SDM calibration that could cause the airbags and seatbelts to fail during~~

1 a crash. To the contrary, before acquiring the vehicle, Plaintiff viewed or heard commercials and  
 2 reviews through television, radio, and the internet that touted the safety and reliability of  
 3 Plaintiff's vehicle and GM vehicles generally. GM concealed the existence of the defective SDM  
 4 calibration from consumers including Plaintiff. Plaintiff would not have purchased the Class  
 5 Vehicle, or would have paid less for it, if Defendants did not conceal material information about  
 6 the defective SDM calibration.

7 6.——Plaintiff Ric Batten ("Plaintiff" for the purposes of this paragraph) is an individual  
 8 residing in Arlington, TX. In or around 2016, Plaintiff purchased a 2011 GMC Crew Cab Pickup  
 9 2500 (for purposes of Plaintiff's allegations, the "Class Vehicle") from a pre-owned Car Lot in  
 10 the Greater Texas area. At the time, Plaintiff reasonably expected that the airbags and seatbelts  
 11 would function in the event of a crash and had no way of knowing that it contained a dangerous  
 12 and defective SDM calibration that could cause the airbags and seatbelts to fail during a crash. To  
 13 the contrary, before acquiring the vehicle, Plaintiff viewed or heard commercials and reviews  
 14 through television, radio, and the internet that touted the safety and reliability of Plaintiff's  
 15 vehicle and GM vehicles generally. GM concealed the existence of the defective SDM calibration  
 16 from consumers including Plaintiff. Plaintiff would not have purchased the Class Vehicle, or  
 17 would have paid less for it, if Defendants did not conceal material information about the defective  
 18 SDM calibration.

19 7.——Plaintiff George Bayer ("Plaintiff" for the purposes of this paragraph) is an  
 20 individual residing in Lowell, MI. On or around 2014, Plaintiff purchased a 2014 GMC Sierra  
 21 1500 (for purposes of Plaintiff's allegations, the "Class Vehicle") from Whittenbag GMC, Lowell  
 22 (now Betton Baker GMC) in Lowell, MI. At the time, Plaintiff reasonably expected that the  
 23 airbags and seatbelts would function in the event of a crash and had no way of knowing that it  
 24 contained a dangerous and defective SDM calibration that could cause the airbags and seatbelts to  
 25 fail during a crash. To the contrary, before acquiring the vehicle, Plaintiff viewed or heard  
 26 commercials and reviews through television, radio, and the internet that touted the safety and  
 27 reliability of Plaintiff's vehicle and GM vehicles generally. GM concealed the existence of the  
 28 defective SDM calibration from consumers including Plaintiff. Plaintiff would not have

~~purchased the Class Vehicle, or would have paid less for it, if Defendants did not conceal material information about the defective SDM calibration.~~

~~8. Plaintiff Jerome Blatt (“Plaintiff” for the purposes of this paragraph) is an individual residing in Eagan, MN. In or around 2019, Plaintiff purchased a 2014 GMC Sierra (for purposes of Plaintiff’s allegations, the “Class Vehicle”) from a private party in Indiana. At the time, Plaintiff reasonably expected that the airbags and seatbelts would function in the event of a crash and had no way of knowing that it contained a dangerous and defective SDM calibration that could cause the airbags and seatbelts to fail during a crash. To the contrary, before acquiring the vehicle, Plaintiff viewed or heard commercials and reviews through television, radio, and the internet that touted the safety and reliability of Plaintiff’s vehicle and GM vehicles generally. GM concealed the existence of the defective SDM calibration from consumers including Plaintiff. Plaintiff would not have purchased the Class Vehicle, or would have paid less for it, if Defendants did not conceal material information about the defective SDM calibration.~~

~~9. Plaintiff Ira Bondsteel (“Plaintiff” for the purposes of this paragraph) is an individual residing in Webster, TX. In or about January 2018, Plaintiff purchased a 2012 Chevrolet Silverado 1500 (for purposes of Plaintiff’s allegations, the “Class Vehicle”) from A1 Auto Finance, located in Kemah, TX. At the time, Plaintiff reasonably expected that the airbags and seatbelts would function in the event of a crash and had no way of knowing that it contained a dangerous and defective SDM calibration that could cause the airbags and seatbelts to fail during a crash. To the contrary, before acquiring the vehicle, Plaintiff viewed or heard commercials and reviews through television, radio, and the internet that touted the safety and reliability of Plaintiff’s vehicle and GM vehicles generally. GM concealed the existence of the defective SDM calibration from consumers including Plaintiff. Plaintiff would not have purchased the Class Vehicle, or would have paid less for it, if Defendants did not conceal material information about the defective SDM calibration.~~

~~10. Plaintiff Adam Brown (“Plaintiff” for the purposes of this paragraph) is an individual residing in Beacon, NY. On or around July 2015, Plaintiff purchased a pre-owned 2012 GMC Yukon (for purposes of Plaintiff’s allegations, the “Class Vehicle”) from a used car~~

1 dealership in New York, NY. At the time, Plaintiff reasonably expected that the airbags and  
 2 seatbelts would function in the event of a crash and had no way of knowing that it contained a  
 3 dangerous and defective SDM calibration that could cause the airbags and seatbelts to fail during  
 4 a crash. To the contrary, before acquiring the vehicle, Plaintiff viewed or heard commercials and  
 5 reviews through television, radio, and the internet that touted the safety and reliability of  
 6 Plaintiff's vehicle and GM vehicles generally. GM concealed the existence of the defective SDM  
 7 calibration from consumers including Plaintiff. Plaintiff would not have purchased the Class  
 8 Vehicle, or would have paid less for it, if Defendants did not conceal material information about  
 9 the defective SDM calibration.

10 11. Plaintiff David Casey ("Plaintiff" for the purposes of this paragraph) is an  
 11 individual residing in Pleasant Garden, NC. On or around February 17, 2021, Plaintiff purchased  
 12 a 2021 Chevrolet Silverado (for purposes of Plaintiff's allegations, the "Class Vehicle") from  
 13 Powers Swain Chevrolet, located in Fayetteville, NC. At the time, Plaintiff reasonably expected  
 14 that the Vehicles' airbags and seatbelts would function in the event of a crash and had no way of  
 15 knowing that it contained a dangerous and defective SDM calibration that could cause the airbags  
 16 and seatbelts to fail during a crash. To the contrary, before acquiring the Class Vehicle, Plaintiff  
 17 viewed or heard commercials and reviews through television, radio, and the internet that touted  
 18 the safety and reliability of Plaintiff's vehicle and GM vehicles generally. GM concealed the  
 19 existence of the defective SDM calibration from consumers including Plaintiff. Plaintiff would  
 20 not have purchased the Class Vehicle, or would have paid less for it, if Defendants did not  
 21 conceal material information about the defective SDM calibration.

22 12. Plaintiff Christina Colatriano ("Plaintiff" for the purposes of this paragraph) is an  
 23 individual residing in Delmar, DE. In or around 2018, Plaintiff purchased a 2013 Chevy Silverado  
 24 3500 (for purposes of Plaintiff's allegations, the "Class Vehicle") from Hertrich Buick/GMC in  
 25 Seaford, DE. At the time, Plaintiff reasonably expected that the airbags and seatbelts would  
 26 function in the event of a crash and had no way of knowing that it contained a dangerous and  
 27 defective SDM calibration that could cause the airbags and seatbelts to fail during a crash. To the  
 28 contrary, before acquiring the vehicle, Plaintiff viewed or heard commercials and reviews through



1 television, radio, and the internet that touted the safety and reliability of Plaintiff's vehicle and  
 2 GM vehicles generally. GM concealed the existence of the defective SDM calibration from  
 3 consumers including Plaintiff. Plaintiff would not have purchased the Class Vehicle, or would  
 4 have paid less for it, if Defendants did not conceal material information about the defective SDM  
 5 calibration.

6 13. Plaintiff Delbert Dehne ("Plaintiff" for the purposes of this paragraph) is an  
 7 individual residing in East Peoria, IL. In or around 2013, Plaintiff purchased a 2013 Chevrolet  
 8 Silverado 1550 (for purposes of Plaintiff's allegations, the "Class Vehicle") from the Sam Leman  
 9 Dealership in Morton, IL. At the time, Plaintiff reasonably expected that the airbags and seatbelts  
 10 would function in the event of a crash and had no way of knowing that it contained a dangerous  
 11 and defective SDM calibration that could cause the airbags and seatbelts to fail during a crash. To  
 12 the contrary, before acquiring the vehicle, Plaintiff viewed or heard commercials and reviews  
 13 through television, radio, and the internet that touted the safety and reliability of Plaintiff's  
 14 vehicle and GM vehicles generally. GM concealed the existence of the defective SDM calibration  
 15 from consumers including Plaintiff. Plaintiff would not have purchased the Class Vehicle, or  
 16 would have paid less for it, if Defendants did not conceal material information about the defective  
 17 SDM calibration.

18 14. Plaintiff Ashley Dheel ("Plaintiff" for the purposes of this paragraph) is an  
 19 individual residing in Lakewood, WA. In or about spring 2021, Plaintiff purchased a pre-owned  
 20 2010 GMC Acadia SLT (for purposes of Plaintiff's allegations, the "Class Vehicle") from JRS  
 21 Auto Sales in Tacoma, WA. At the time, Plaintiff reasonably expected that the airbags and  
 22 seatbelts would function in the event of a crash and had no way of knowing that it contained a  
 23 dangerous and defective SDM calibration that could cause the airbags and seatbelts to fail during  
 24 a crash. To the contrary, before acquiring the vehicle, Plaintiff viewed or heard commercials and  
 25 reviews through television, radio, and the internet that touted the safety and reliability of  
 26 Plaintiff's vehicle and GM vehicles generally. GM concealed the existence of the defective SDM  
 27 calibration from consumers including Plaintiff. Plaintiff would not have purchased the Class  
 28

~~Vehicle, or would have paid less for it, if Defendants did not conceal material information about the defective SDM calibration.~~

~~15. Plaintiff Travis Dieter (“Plaintiff” for the purposes of this paragraph) is an individual residing in Sandpoint, ID. On April 20, 2013, Plaintiff purchased a 2013 Chevrolet Silverado LTZ (for purposes of Plaintiff’s allegations, the “Class Vehicle”) from Taylor & Sons Chevrolet in Ponderay, ID. At the time, Plaintiff reasonably expected that the Vehicles’ airbags and seatbelts would function in the event of a crash and had no way of knowing that it contained a dangerous and defective SDM calibration that could cause the airbags and seatbelts to fail during a crash. To the contrary, before acquiring the Vehicle, Plaintiff viewed or heard commercials and reviews through television, radio, and the internet that touted the safety and reliability of Plaintiff’s vehicle and GM vehicles generally. Plaintiff reviewed GM’s promotional materials such as GM’s website, sales brochures, television advertisements, Monroney sticker and spoke with at least one sales representative, none of which disclosed the SDM Calibration Defect. GM concealed the existence of the defective SDM calibration from consumers including Plaintiff. Plaintiff would not have purchased the Class Vehicle, or would have paid less for it, if Defendants did not conceal material information about the defective SDM calibration.~~

~~16. Plaintiff Greg Douthwaite (“Plaintiff” for the purposes of this paragraph) is an individual residing in Beaver Dam, WI. On or around 2016/2017, Plaintiff purchased a 2013 Chevy Silverado 1500 (for purposes of Plaintiff’s allegations, the “Class Vehicle”) from Countryside GM in Beaver Dam, WI. At the time, Plaintiff reasonably expected that the airbags and seatbelts would function in the event of a crash and had no way of knowing that it contained a dangerous and defective SDM calibration that could cause the airbags and seatbelts to fail during a crash. To the contrary, before acquiring the vehicle, Plaintiff viewed or heard commercials and reviews through television, radio, and the internet that touted the safety and reliability of Plaintiff’s vehicle and GM vehicles generally. GM concealed the existence of the defective SDM calibration from consumers including Plaintiff. Plaintiff would not have purchased the Class Vehicle, or would have paid less for it, if Defendants did not conceal material information about the defective SDM calibration.~~

1           17.——Plaintiff Ed Driggers, Jr. (“Plaintiff” for the purposes of this paragraph) is an  
 2 individual residing in Savannah, GA. On or around 2016, Plaintiff purchased a 2012 Chevy  
 3 Silverado 1500 (for purposes of Plaintiff’s allegations, the “Class Vehicle”) from Metter Ford in  
 4 Metter, GA. At the time, Plaintiff reasonably expected that the airbags and seatbelts would  
 5 function in the event of a crash and had no way of knowing that it contained a dangerous and  
 6 defective SDM calibration that could cause the airbags and seatbelts to fail during a crash. To the  
 7 contrary, before acquiring the vehicle, Plaintiff viewed or heard commercials and reviews through  
 8 television, radio, and the internet that touted the safety and reliability of Plaintiff’s vehicle and  
 9 GM vehicles generally. GM concealed the existence of the defective SDM calibration from  
 10 consumers including Plaintiff. Plaintiff would not have purchased the Class Vehicle, or would  
 11 have paid less for it, if Defendants did not conceal material information about the defective SDM  
 12 calibration.

13           18.——Plaintiff Stephen Duncan (“Plaintiff” for the purposes of this paragraph) is an  
 14 individual residing in Clinton, AR. On or around 2016, Plaintiff purchased a 2011 GMC Sierra  
 15 Pickup (for purposes of Plaintiff’s allegations, the “Class Vehicle”) from Peyton Dodge—  
 16 Cowboy Dodge in Clinton, AK. At the time, Plaintiff reasonably expected that the airbags and  
 17 seatbelts would function in the event of a crash and had no way of knowing that it contained a  
 18 dangerous and defective SDM calibration that could cause the airbags and seatbelts to fail during  
 19 a crash. To the contrary, before acquiring the vehicle, Plaintiff viewed or heard commercials and  
 20 reviews through television, radio, and the internet that touted the safety and reliability of  
 21 Plaintiff’s vehicle and GM vehicles generally. GM concealed the existence of the defective SDM  
 22 calibration from consumers including Plaintiff. Plaintiff would not have purchased the Class  
 23 Vehicle, or would have paid less for it, if Defendants did not conceal material information about  
 24 the defective SDM calibration.

25           19.——Plaintiff Douglas Dye (“Plaintiff” for the purposes of this paragraph) is an  
 26 individual residing in Cedar Bluff, Virginia. In or about December 2020, Plaintiff purchased a  
 27 2021 GMC Canyon (for purposes of Plaintiff’s allegations, the “Class Vehicle”) from Ramey  
 28 Princeton, a GM dealership, located in Princeton, West Virginia. At the time, Plaintiff reasonably

~~expected that the airbags and seatbelts would function in the event of a crash and had no way of knowing that it contained a dangerous and defective SDM calibration that could cause the airbags and seatbelts to fail during a crash. To the contrary, before acquiring the vehicle, Plaintiff viewed or heard commercials and reviews through television, radio, and the internet that touted the safety and reliability of Plaintiff's vehicle and GM vehicles generally. GM concealed the existence of the defective SDM calibration from consumers including Plaintiff. Plaintiff would not have purchased the Class Vehicle, or would have paid less for it, if Defendants did not conceal material information about the defective SDM calibration.~~

20. — Plaintiff William Endress ("Plaintiff" for the purposes of this paragraph) is an individual residing in Lebanon, NJ. In May 2012 Plaintiff purchased a 2012 Chevrolet Colorado (for purposes of Plaintiff's allegations, the "Class Vehicle") from Brown Daub Chevrolet, a GM dealership, located in Nazareth, PA. At the time, Plaintiff reasonably expected that the airbags and seatbelts would function in the event of a crash and had no way of knowing that it contained a dangerous and defective SDM calibration that could cause the airbags and seatbelts to fail during a crash. To the contrary, before acquiring the vehicle, Plaintiff viewed or heard commercials and reviews through television, radio, and the internet that touted the safety and reliability of Plaintiff's vehicle and GM vehicles generally. GM concealed the existence of the defective SDM calibration from consumers including Plaintiff. Plaintiff would not have purchased the Class Vehicle, or would have paid less for it, if Defendants did not conceal material information about the defective SDM calibration.

21. — Plaintiff Lee Ford ("Plaintiff" for the purposes of this paragraph) is an individual residing in Egg Harbor City, NJ. In or about November 2020, Plaintiff purchased a 2014 Chevrolet Tahoe (for purposes of Plaintiff's allegations, the "Class Vehicle") from 322 Motors, located in Williamstown, NJ. At the time, Plaintiff reasonably expected that the airbags and seatbelts would function in the event of a crash and had no way of knowing that it contained a dangerous and defective SDM calibration that could cause the airbags and seatbelts to fail during a crash. To the contrary, before acquiring the vehicle, Plaintiff viewed or heard commercials and reviews through television, radio, and the internet that touted the safety and reliability of

~~Plaintiff's vehicle and GM vehicles generally. GM concealed the existence of the defective SDM calibration from consumers including Plaintiff. Plaintiff would not have purchased the Class Vehicle, or would have paid less for it, if Defendants did not conceal material information about the defective SDM calibration.~~

~~22.—Plaintiff William Free ("Plaintiff" for the purposes of this paragraph) is an individual residing in Cocoa, FL. In or around 2016, Plaintiff purchased a 2010 GMC Yukon XL (for purposes of Plaintiff's allegations, the "Class Vehicle") from Mullin X Ford Dealership Orlando in Orlando, FL. At the time, Plaintiff reasonably expected that the airbags and seatbelts would function in the event of a crash and had no way of knowing that it contained a dangerous and defective SDM calibration that could cause the airbags and seatbelts to fail during a crash. To the contrary, before acquiring the vehicle, Plaintiff viewed or heard commercials and reviews through television, radio, and the internet that touted the safety and reliability of Plaintiff's vehicle and GM vehicles generally. GM concealed the existence of the defective SDM calibration from consumers including Plaintiff. Plaintiff would not have purchased the Class Vehicle, or would have paid less for it, if Defendants did not conceal material information about the defective SDM calibration.~~

~~23.—Plaintiff Lisa Gerould ("Plaintiff" for the purposes of this paragraph) is an individual residing in Spartanburg, SC. In or about January 2016, Plaintiff purchased a 2013 Chevrolet Silverado 1500 (for purposes of Plaintiff's allegations, the "Class Vehicle") from Greenway Chevrolet, located in Spartanburg, SC. At the time, Plaintiff reasonably expected that the airbags and seatbelts would function in the event of a crash and had no way of knowing that it contained a dangerous and defective SDM calibration that could cause the airbags and seatbelts to fail during a crash. To the contrary, before acquiring the vehicle, Plaintiff viewed or heard commercials and reviews through television, radio, and the internet that touted the safety and reliability of Plaintiff's vehicle and GM vehicles generally. GM concealed the existence of the defective SDM calibration from consumers including Plaintiff. Plaintiff would not have purchased the Class Vehicle, or would have paid less for it, if Defendants did not conceal material information about the defective SDM calibration.~~

24. Plaintiff Alisha Gonzalez (“Plaintiff” for the purposes of this paragraph) is an individual residing in Six Lakes, MI. In or around December 2019, Plaintiff purchased a 2012 GMC Acadia (for purposes of Plaintiff’s allegations, the “Class Vehicle”) from The Car Corner in Vestaburg, MI. At the time, Plaintiff reasonably expected that the airbags and seatbelts would function in the event of a crash and had no way of knowing that it contained a dangerous and defective SDM calibration that could cause the airbags and seatbelts to fail during a crash. To the contrary, before acquiring the vehicle, Plaintiff viewed or heard commercials and reviews through television, radio, and the internet that touted the safety and reliability of Plaintiff’s vehicle and GM vehicles generally. GM concealed the existence of the defective SDM calibration from consumers including Plaintiff. Plaintiff would not have purchased the Class Vehicle, or would have paid less for it, if Defendants did not conceal material information about the defective SDM calibration.

25. Plaintiff Harryette Gosa (“Plaintiff” for the purposes of this paragraph) is an individual residing in Greenwood Springs, MS. In or around 2014, Plaintiff purchased a 2014 GMC Acadia (for purposes of Plaintiff’s allegations, the “Class Vehicle”) from Larry Clark Chevy Dealership in Amory, MS. At the time, Plaintiff reasonably expected that the airbags and seatbelts would function in the event of a crash and had no way of knowing that it contained a dangerous and defective SDM calibration that could cause the airbags and seatbelts to fail during a crash. To the contrary, before acquiring the vehicle, Plaintiff viewed or heard commercials and reviews through television, radio, and the internet that touted the safety and reliability of Plaintiff’s vehicle and GM vehicles generally. GM concealed the existence of the defective SDM calibration from consumers including Plaintiff. Plaintiff would not have purchased the Class Vehicle, or would have paid less for it, if Defendants did not conceal material information about the defective SDM calibration.

26. Plaintiff Rex Hartman (“Plaintiff” for the purposes of this paragraph) is an individual residing in Bedford, PA. On or around 2017/2018, Plaintiff purchased a 2014 Chevy Silverado Pickup (for purposes of Plaintiff’s allegations, the “Class Vehicle”) from Team Auto in Duncansville, PA. At the time, Plaintiff reasonably expected that the airbags and seatbelts would

1 ~~function in the event of a crash and had no way of knowing that it contained a dangerous and~~  
 2 ~~defective SDM calibration that could cause the airbags and seatbelts to fail during a crash. To the~~  
 3 ~~contrary, before acquiring the vehicle, Plaintiff viewed or heard commercials and reviews through~~  
 4 ~~television, radio, and the internet that touted the safety and reliability of Plaintiff's vehicle and~~  
 5 ~~GM vehicles generally. GM concealed the existence of the defective SDM calibration from~~  
 6 ~~consumers including Plaintiff. Plaintiff would not have purchased the Class Vehicle, or would~~  
 7 ~~have paid less for it, if Defendants did not conceal material information about the defective SDM~~  
 8 ~~calibration.~~

9       27.——Plaintiff Judy Haviland (“Plaintiff” for the purposes of this paragraph) is an  
 10 individual residing in Harrison, MI. In August 2021, Plaintiff purchased a 2009 Chevrolet  
 11 Silverado 1500 (for purposes of Plaintiff’s allegations, the “Class Vehicle”) from Lakeside  
 12 Motors LLC, located in Houghton Lake, Michigan. At the time, Plaintiff reasonably expected that  
 13 the airbags and seatbelts would function in the event of a crash and had no way of knowing that it  
 14 contained a dangerous and defective SDM calibration that could cause the airbags and seatbelts to  
 15 fail during a crash. To the contrary, before acquiring the vehicle, Plaintiff viewed or heard  
 16 commercials and reviews through television, radio, and the internet that touted the safety and  
 17 reliability of Plaintiff’s vehicle and GM vehicles generally. GM concealed the existence of the  
 18 defective SDM calibration from consumers including Plaintiff. Plaintiff would not have  
 19 purchased the Class Vehicle, or would have paid less for it, if Defendants did not conceal material  
 20 information about the defective SDM calibration.

21       28.——Plaintiff Bruce Heise (“Plaintiff” for the purposes of this paragraph) is an  
 22 individual residing in Blairsville, PA. In or about, January 2017 Plaintiff purchased a 2016  
 23 Chevrolet Silverado 1500 (for purposes of Plaintiff’s allegations, the “Class Vehicle”) from  
 24 Watson Chevrolet, located in Blairsville, PA. At the time, Plaintiff reasonably expected that the  
 25 airbags and seatbelts would function in the event of a crash and had no way of knowing that it  
 26 contained a dangerous and defective SDM calibration that could cause the airbags and seatbelts to  
 27 fail during a crash. To the contrary, before acquiring the vehicle, Plaintiff viewed or heard  
 28 commercials and reviews through television, radio, and the internet that touted the safety and

1 ~~reliability of Plaintiff's vehicle and GM vehicles generally. GM concealed the existence of the~~  
 2 ~~defective SDM calibration from consumers including Plaintiff. Plaintiff would not have~~  
 3 ~~purchased the Class Vehicle, or would have paid less for it, if Defendants did not conceal material~~  
 4 ~~information about the defective SDM calibration.~~

5       29.—~~Plaintiff Zeckery Henslee ("Plaintiff" for the purposes of this paragraph) is an~~  
 6 ~~individual residing in Decatur, MI. On or around 2017, Plaintiff purchased a 2009 Chevy~~  
 7 ~~Silverado (for purposes of Plaintiff's allegations, the "Class Vehicle") from Autowest in~~  
 8 ~~Plainwell, MI. At the time, Plaintiff reasonably expected that the airbags and seatbelts would~~  
 9 ~~function in the event of a crash and had no way of knowing that it contained a dangerous and~~  
 10 ~~defective SDM calibration that could cause the airbags and seatbelts to fail during a crash. To the~~  
 11 ~~contrary, before acquiring the vehicle, Plaintiff viewed or heard commercials and reviews through~~  
 12 ~~television, radio, and the internet that touted the safety and reliability of Plaintiff's vehicle and~~  
 13 ~~GM vehicles generally. GM concealed the existence of the defective SDM calibration from~~  
 14 ~~consumers including Plaintiff. Plaintiff would not have purchased the Class Vehicle, or would~~  
 15 ~~have paid less for it, if Defendants did not conceal material information about the defective SDM~~  
 16 ~~calibration.~~

17       30.—~~Plaintiff John Hickey ("Plaintiff" for the purposes of this paragraph) is an~~  
 18 ~~individual residing in Keyser, WV. On or around 2019, Plaintiff purchased a 2010 GMC Sierra~~  
 19 ~~(for purposes of Plaintiff's allegations, the "Class Vehicle") from a private party in West~~  
 20 ~~Virginia. At the time, Plaintiff reasonably expected that the airbags and seatbelts would function~~  
 21 ~~in the event of a crash and had no way of knowing that it contained a dangerous and defective~~  
 22 ~~SDM calibration that could cause the airbags and seatbelts to fail during a crash. To the contrary,~~  
 23 ~~before acquiring the vehicle, Plaintiff viewed or heard commercials and reviews through~~  
 24 ~~television, radio, and the internet that touted the safety and reliability of Plaintiff's vehicle and~~  
 25 ~~GM vehicles generally. GM concealed the existence of the defective SDM calibration from~~  
 26 ~~consumers including Plaintiff. Plaintiff would not have purchased the Class Vehicle, or would~~  
 27 ~~have paid less for it, if Defendants did not conceal material information about the defective SDM~~  
 28 ~~calibration.~~



31. Plaintiff Kimberly Hickle (“Plaintiff” for the purposes of this paragraph) is an individual residing in Crystal, MN. On or around 2018, Plaintiff purchased a 2010 Chevy Traverse LT (for purposes of Plaintiff’s allegations, the “Class Vehicle”) from Jake’s Auto Mall in Ham Lake, MN. At the time, Plaintiff reasonably expected that the airbags and seatbelts would function in the event of a crash and had no way of knowing that it contained a dangerous and defective SDM calibration that could cause the airbags and seatbelts to fail during a crash. To the contrary, before acquiring the vehicle, Plaintiff viewed or heard commercials and reviews through television, radio, and the internet that touted the safety and reliability of Plaintiff’s vehicle and GM vehicles generally. GM concealed the existence of the defective SDM calibration from consumers including Plaintiff. Plaintiff would not have purchased the Class Vehicle, or would have paid less for it, if Defendants did not conceal material information about the defective SDM calibration.

32. Plaintiff Randy Holdren (“Plaintiff” for the purposes of this paragraph) is an individual residing in Fort Meyers, FL. In or around 2014, Plaintiff purchased a 2014 Chevy Travers and a 2012 GMC Sierra Truck (for purposes of Plaintiff’s allegations, the “Class Vehicles”) from Sullivan Chevy Dealership and Warton Martin Dealership in Champagne, IL. At the time, Plaintiff reasonably expected that the airbags and seatbelts would function in the event of a crash and had no way of knowing that it contained a dangerous and defective SDM calibration that could cause the airbags and seatbelts to fail during a crash. To the contrary, before acquiring the vehicles, Plaintiff viewed or heard commercials and reviews through television, radio, and the internet that touted the safety and reliability of Plaintiff’s vehicles and GM vehicles generally. GM concealed the existence of the defective SDM calibration from consumers including Plaintiff. Plaintiff would not have purchased the Class Vehicles, or would have paid less for them, if Defendants did not conceal material information about the defective SDM calibration.

33. Plaintiff Kevin Hopkins (“Plaintiff” for the purposes of this paragraph) is an individual residing in Las Vegas, NV. In or around 2019, Plaintiff purchased a 2011 Chevrolet Silverado (for purposes of Plaintiff’s allegations, the “Class Vehicle”) from Fairway Chevrolet in

1 ~~Las Vegas, NV. At the time, Plaintiff reasonably expected that the airbags and seatbelts would~~  
 2 ~~function in the event of a crash and had no way of knowing that it contained a dangerous and~~  
 3 ~~defective SDM calibration that could cause the airbags and seatbelts to fail during a crash. To the~~  
 4 ~~contrary, before acquiring the vehicle, Plaintiff viewed or heard commercials and reviews through~~  
 5 ~~television, radio, and the internet that touted the safety and reliability of Plaintiff's vehicle and~~  
 6 ~~GM vehicles generally. GM concealed the existence of the defective SDM calibration from~~  
 7 ~~consumers including Plaintiff. Plaintiff would not have purchased the Class Vehicle, or would~~  
 8 ~~have paid less for it, if Defendants did not conceal material information about the defective SDM~~  
 9 ~~calibration.~~

10 34. Plaintiff Kara Hummel ("Plaintiff" for the purposes of this paragraph) is an  
 11 individual residing in Longview, Washington. On or around March 15, 2016, Plaintiff purchased  
 12 a 2015 Chevrolet Suburban (for purposes of Plaintiff's allegations, the "Class Vehicle") from  
 13 Alan Webb Chevrolet in Vancouver, WA. At the time, Plaintiff reasonably expected that the  
 14 Vehicles' airbags and seatbelts would function in the event of a crash and had no way of knowing  
 15 that it contained a dangerous and defective SDM calibration that could cause the airbags and  
 16 seatbelts to fail during a crash. To the contrary, before acquiring the vehicle, Plaintiff viewed or  
 17 heard commercials and reviews through television, radio, and the internet that touted the safety  
 18 and reliability of Plaintiff's vehicle and GM vehicles generally, and spoke with at least one sales  
 19 representative who did not disclose the SDM Calibration Defect. GM concealed the existence of  
 20 the defective SDM calibration from consumers including Plaintiff. Plaintiff would not have  
 21 purchased the Class Vehicle, or would have paid less for it, if Defendants did not conceal material  
 22 information about the defective SDM calibration.

23 35. Plaintiff Aaron Jackson ("Plaintiff" for the purposes of this paragraph) is an  
 24 individual residing in Huntsville, AL. On or around 2016, Plaintiff purchased a 2013 Chevy  
 25 Pickup (for purposes of Plaintiff's allegations, the "Class Vehicle") from a Chevrolet Dealership  
 26 in Huntsville, AL. At the time, Plaintiff reasonably expected that the airbags and seatbelts would  
 27 function in the event of a crash and had no way of knowing that it contained a dangerous and  
 28 defective SDM calibration that could cause the airbags and seatbelts to fail during a crash. To the

1 ~~contrary, before acquiring the vehicle, Plaintiff viewed or heard commercials and reviews through~~  
 2 ~~television, radio, and the internet that touted the safety and reliability of Plaintiff's vehicle and~~  
 3 ~~GM vehicles generally. GM concealed the existence of the defective SDM calibration from~~  
 4 ~~consumers including Plaintiff. Plaintiff would not have purchased the Class Vehicle, or would~~  
 5 ~~have paid less for it, if Defendants did not conceal material information about the defective SDM~~  
 6 ~~calibration.~~

7 36.—Plaintiff David James ("Plaintiff" for the purposes of this paragraph) is an  
 8 individual residing in Lebanon, IN. On or around 2018, Plaintiff purchased a 2012 GMC Sierra  
 9 (for purposes of Plaintiff's allegations, the "Class Vehicle") from Bart Car Sales in Fort Wayne,  
 10 IN. At the time, Plaintiff reasonably expected that the airbags and seatbelts would function in the  
 11 event of a crash and had no way of knowing that it contained a dangerous and defective SDM  
 12 calibration that could cause the airbags and seatbelts to fail during a crash. To the contrary, before  
 13 acquiring the vehicle, Plaintiff viewed or heard commercials and reviews through television,  
 14 radio, and the internet that touted the safety and reliability of Plaintiff's vehicle and GM vehicles  
 15 generally. GM concealed the existence of the defective SDM calibration from consumers  
 16 including Plaintiff. Plaintiff would not have purchased the Class Vehicle, or would have paid less  
 17 for it, if Defendants did not conceal material information about the defective SDM calibration.

18 37.—Plaintiff Gregory Juskiewicz ("Plaintiff" for the purposes of this paragraph) is an  
 19 individual residing in Chardon, OH. In or around 2013, Plaintiff purchased a 2013 Chevy 1500  
 20 Silverado (for purposes of Plaintiff's allegations, the "Class Vehicle") from Preston Chevy in  
 21 Burton, OH. At the time, Plaintiff reasonably expected that the airbags and seatbelts would  
 22 function in the event of a crash and had no way of knowing that it contained a dangerous and  
 23 defective SDM calibration that could cause the airbags and seatbelts to fail during a crash. To the  
 24 contrary, before acquiring the vehicle, Plaintiff viewed or heard commercials and reviews through  
 25 television, radio, and the internet that touted the safety and reliability of Plaintiff's vehicle and  
 26 GM vehicles generally. GM concealed the existence of the defective SDM calibration from  
 27 consumers including Plaintiff. Plaintiff would not have purchased the Class Vehicle, or would  
 28

1 have paid less for it, if Defendants did not conceal material information about the defective SDM  
2 calibration.

3 38.—Plaintiff ShaVon Keith (“Plaintiff” for the purposes of this paragraph) is an  
4 individual residing in Villa Rica, GA. In or around 2021, Plaintiff purchased a 2014 Chevy  
5 Silverado (for purposes of Plaintiff’s allegations, the “Class Vehicle”) from Fairway Chevrolet in  
6 Las Vegas, NV. At the time, Plaintiff reasonably expected that the airbags and seatbelts would  
7 function in the event of a crash and had no way of knowing that it contained a dangerous and  
8 defective SDM calibration that could cause the airbags and seatbelts to fail during a crash. To the  
9 contrary, before acquiring the vehicle, Plaintiff viewed or heard commercials and reviews through  
10 television, radio, and the internet that touted the safety and reliability of Plaintiff’s vehicle and  
11 GM vehicles generally. GM concealed the existence of the defective SDM calibration from  
12 consumers including Plaintiff. Plaintiff would not have purchased the Class Vehicle, or would  
13 have paid less for it, if Defendants did not conceal material information about the defective SDM  
14 calibration.

15 39.—Plaintiff Jason Klinger (“Plaintiff” for the purposes of this paragraph) is an  
16 individual residing in Indian Trail, NC. In or around 2014, Plaintiff purchased a 2014 Chevy  
17 Silverado LT (for purposes of Plaintiff’s allegations, the “Class Vehicle”) from City Chevy in  
18 Charlotte, NC. At the time, Plaintiff reasonably expected that the airbags and seatbelts would  
19 function in the event of a crash and had no way of knowing that it contained a dangerous and  
20 defective SDM calibration that could cause the airbags and seatbelts to fail during a crash. To the  
21 contrary, before acquiring the vehicle, Plaintiff viewed or heard commercials and reviews through  
22 television, radio, and the internet that touted the safety and reliability of Plaintiff’s vehicle and  
23 GM vehicles generally. GM concealed the existence of the defective SDM calibration from  
24 consumers including Plaintiff. Plaintiff would not have purchased the Class Vehicle, or would  
25 have paid less for it, if Defendants did not conceal material information about the defective SDM  
26 calibration.

27 40.—Plaintiff Debra Knerr (“Plaintiff” for the purposes of this paragraph) is an  
28 individual residing in Trade, TN. In or about fall 2019, Plaintiff purchased a pre-owned 2016

~~Chevrolet Silverado 1500 LTZ (for purposes of Plaintiff's allegations, the "Class Vehicle") from Ramey Auto Group in Virginia. At the time, Plaintiff reasonably expected that the airbags and seatbelts would function in the event of a crash and had no way of knowing that it contained a dangerous and defective SDM calibration that could cause the airbags and seatbelts to fail during a crash. To the contrary, before acquiring the vehicle, Plaintiff viewed or heard commercials and reviews through television, radio, and the internet that touted the safety and reliability of Plaintiff's vehicle and GM vehicles generally. GM concealed the existence of the defective SDM calibration from consumers including Plaintiff. Plaintiff would not have purchased the Class Vehicle, or would have paid less for it, if Defendants did not conceal material information about the defective SDM calibration.~~

41.—~~Plaintiff Clarise Knight ("Plaintiff" for the purposes of this paragraph) is an individual residing in Miami Gardens, FL. In or around 2014, Plaintiff purchased a pre-owned 2014 Chevrolet Traverse (for purposes of Plaintiff's allegations, the "Class Vehicle") from AutoNation, located in Miami, FL. At the time, Plaintiff reasonably expected that the airbags and seatbelts would function in the event of a crash and had no way of knowing that it contained a dangerous and defective SDM calibration that could cause the airbags and seatbelts to fail during a crash. To the contrary, before acquiring the vehicle, Plaintiff viewed or heard commercials and reviews through television, radio, and the internet that touted the safety and reliability of Plaintiff's vehicle and GM vehicles generally. GM concealed the existence of the defective SDM calibration from consumers including Plaintiff. Plaintiff would not have purchased the Class Vehicle, or would have paid less for it, if Defendants did not conceal material information about the defective SDM calibration.~~

42.—~~Plaintiff Andrew Lawson ("Plaintiff" for the purposes of this paragraph) is an individual residing in Pauline, SC. On or around 2021, Plaintiff purchased a 2013 Chevy Silverado (for purposes of Plaintiff's allegations, the "Class Vehicle") from Bradshaw Chevrolet in Greer, SC. At the time, Plaintiff reasonably expected that the airbags and seatbelts would function in the event of a crash and had no way of knowing that it contained a dangerous and defective SDM calibration that could cause the airbags and seatbelts to fail during a crash. To the~~

1 ~~contrary, before acquiring the vehicle, Plaintiff viewed or heard commercials and reviews through~~  
 2 ~~television, radio, and the internet that touted the safety and reliability of Plaintiff's vehicle and~~  
 3 ~~GM vehicles generally. GM concealed the existence of the defective SDM calibration from~~  
 4 ~~consumers including Plaintiff. Plaintiff would not have purchased the Class Vehicle, or would~~  
 5 ~~have paid less for it, if Defendants did not conceal material information about the defective SDM~~  
 6 ~~calibration.~~

7 43. ~~Plaintiff Eric Leeds ("Plaintiff" for the purposes of this paragraph) is an individual~~  
 8 ~~residing in Northfield, NJ. In or about September 2019, Plaintiff purchased a 2012 Chevrolet~~  
 9 ~~Tahoe (for purposes of Plaintiff's allegations, the "Class Vehicle") from Koons Ford, located in~~  
 10 ~~Falls Church, VA. At the time, Plaintiff reasonably expected that the airbags and seatbelts would~~  
 11 ~~function in the event of a crash and had no way of knowing that it contained a dangerous and~~  
 12 ~~defective SDM calibration that could cause the airbags and seatbelts to fail during a crash. To the~~  
 13 ~~contrary, before acquiring the vehicle, Plaintiff viewed or heard commercials and reviews through~~  
 14 ~~television, radio, and the internet that touted the safety and reliability of Plaintiff's vehicle and~~  
 15 ~~GM vehicles generally. GM concealed the existence of the defective SDM calibration from~~  
 16 ~~consumers including Plaintiff. Plaintiff would not have purchased the Class Vehicle, or would~~  
 17 ~~have paid less for it, if Defendants did not conceal material information about the defective SDM~~  
 18 ~~calibration.~~

19 44. ~~Plaintiff Toni Lowe ("Plaintiff" for the purposes of this paragraph) is an individual~~  
 20 ~~residing in Lakeland, FL. In or about August 2018, Plaintiff purchased a 2018 GM Chevrolet~~  
 21 ~~1500 Silverado (for purposes of Plaintiff's allegations, the "Class Vehicle") from Stingray~~  
 22 ~~Chevrolet, located in Plant City, FL. At the time, Plaintiff reasonably expected that the airbags~~  
 23 ~~and seatbelts would function in the event of a crash and had no way of knowing that it contained a~~  
 24 ~~dangerous and defective SDM calibration that could cause the airbags and seatbelts to fail during~~  
 25 ~~a crash. To the contrary, before acquiring the vehicle, Plaintiff viewed or heard commercials and~~  
 26 ~~reviews through television, radio, and the internet that touted the safety and reliability of~~  
 27 ~~Plaintiff's vehicle and GM vehicles generally. GM concealed the existence of the defective SDM~~  
 28 ~~calibration from consumers including Plaintiff. Plaintiff would not have purchased the Class~~

~~Vehicle, or would have paid less for it, if Defendants did not conceal material information about the defective SDM calibration.~~

~~45.—Plaintiff Stephen Loyd (“Plaintiff” for the purposes of this paragraph) is an individual residing in Toney, AL. On or around 2016, Plaintiff purchased a 2012 Chevy Silverado 1500 (for purposes of Plaintiff’s allegations, the “Class Vehicle”) from Howard Bentley Chevy Dealership in Fayetteville, TN. At the time, Plaintiff reasonably expected that the airbags and seatbelts would function in the event of a crash and had no way of knowing that it contained a dangerous and defective SDM calibration that could cause the airbags and seatbelts to fail during a crash. To the contrary, before acquiring the vehicle, Plaintiff viewed or heard commercials and reviews through television, radio, and the internet that touted the safety and reliability of Plaintiff’s vehicle and GM vehicles generally. GM concealed the existence of the defective SDM calibration from consumers including Plaintiff. Plaintiff would not have purchased the Class Vehicle, or would have paid less for it, if Defendants did not conceal material information about the defective SDM calibration.~~

~~46.—Plaintiff Angelica Mar (“Plaintiff” for the purposes of this paragraph) is an individual residing in Melrose Park, IL. In or around late 2016, Plaintiff purchased a pre-owned 2015 GMC Terrain SLT (for purposes of Plaintiff’s allegations, the “Class Vehicle”) from The Hawk Auto Group in IL. At the time, Plaintiff reasonably expected that the airbags and seatbelts would function in the event of a crash and had no way of knowing that it contained a dangerous and defective SDM calibration that could cause the airbags and seatbelts to fail during a crash. To the contrary, before acquiring the vehicle, Plaintiff viewed or heard commercials and reviews through television, radio, and the internet that touted the safety and reliability of Plaintiff’s vehicle and GM vehicles generally. GM concealed the existence of the defective SDM calibration from consumers including Plaintiff. Plaintiff would not have purchased the Class Vehicle, or would have paid less for it, if Defendants did not conceal material information about the defective SDM calibration.~~

~~47.—Plaintiff Allan Martin (“Plaintiff” for the purposes of this paragraph) is an individual residing in Winnsboro, LA. On or around 2017, Plaintiff purchased a 2009 Chevrolet~~

1 ~~Silverado 1500 from a private party in Louisiana, and a 2010 Buick Enclave from a pre-owned~~  
 2 ~~car lot in Monroe, LA (for purposes of Plaintiff's allegations, the "Class Vehicles"). At the time,~~  
 3 ~~Plaintiff reasonably expected that the airbags and seatbelts would function in the event of a crash~~  
 4 ~~and had no way of knowing that it contained a dangerous and defective SDM calibration that~~  
 5 ~~could cause the airbags and seatbelts to fail during a crash. To the contrary, before acquiring the~~  
 6 ~~vehicles, Plaintiff viewed or heard commercials and reviews through television, radio, and the~~  
 7 ~~internet that touted the safety and reliability of Plaintiff's vehicles and GM vehicles generally.~~  
 8 ~~GM concealed the existence of the defective SDM calibration from consumers including Plaintiff.~~  
 9 ~~Plaintiff would not have purchased the Class Vehicles, or would have paid less for them, if~~  
 10 ~~Defendants did not conceal material information about the defective SDM calibration.~~

11 48.—Plaintiff Michael Merkley ("Plaintiff" for the purposes of this paragraph) is an  
 12 individual residing in Boise, ID. On or around July 2017, Plaintiff purchased a 2012 Chevy  
 13 Silverado (for purposes of Plaintiff's allegations, the "Class Vehicle") from Elite Auto Sales in  
 14 Idaho Falls, ID. At the time, Plaintiff reasonably expected that the airbags and seatbelts would  
 15 function in the event of a crash and had no way of knowing that it contained a dangerous and  
 16 defective SDM calibration that could cause the airbags and seatbelts to fail during a crash. To the  
 17 contrary, before acquiring the vehicle, Plaintiff viewed or heard commercials and reviews through  
 18 television, radio, and the internet that touted the safety and reliability of Plaintiff's vehicle and  
 19 GM vehicles generally. GM concealed the existence of the defective SDM calibration from  
 20 consumers including Plaintiff. Plaintiff would not have purchased the Class Vehicle, or would  
 21 have paid less for it, if Defendants did not conceal material information about the defective SDM  
 22 calibration.

23 49.—Plaintiff Allan Miles ("Plaintiff" for the purposes of this paragraph) is an  
 24 individual residing in Pearl, MS. On or around 2018, Plaintiff purchased a 2014 GMC Sierra  
 25 Denali Pickup (for purposes of Plaintiff's allegations, the "Class Vehicle") from Pops Auto Sales  
 26 in Florence, MS. At the time, Plaintiff reasonably expected that the airbags and seatbelts would  
 27 function in the event of a crash and had no way of knowing that it contained a dangerous and  
 28 defective SDM calibration that could cause the airbags and seatbelts to fail during a crash. To the



1 ~~contrary, before acquiring the vehicle, Plaintiff viewed or heard commercials and reviews through~~  
 2 ~~television, radio, and the internet that touted the safety and reliability of Plaintiff's vehicle and~~  
 3 ~~GM vehicles generally. GM concealed the existence of the defective SDM calibration from~~  
 4 ~~consumers including Plaintiff. Plaintiff would not have purchased the Class Vehicle, or would~~  
 5 ~~have paid less for it, if Defendants did not conceal material information about the defective SDM~~  
 6 ~~calibration.~~

7 50.—~~Plaintiff Stephen Miles ("Plaintiff" for the purposes of this paragraph) is an~~  
 8 ~~individual residing in Forest Grove, OR. On or around 2021, Plaintiff purchased a 2010 GMC~~  
 9 ~~Sierra HD 3500 (for purposes of Plaintiff's allegations, the "Class Vehicle") from Bridge City~~  
 10 ~~Auto in Gladstone, OR. At the time, Plaintiff reasonably expected that the airbags and seatbelts~~  
 11 ~~would function in the event of a crash and had no way of knowing that it contained a dangerous~~  
 12 ~~and defective SDM calibration that could cause the airbags and seatbelts to fail during a crash. To~~  
 13 ~~the contrary, before acquiring the vehicle, Plaintiff viewed or heard commercials and reviews~~  
 14 ~~through television, radio, and the internet that touted the safety and reliability of Plaintiff's~~  
 15 ~~vehicle and GM vehicles generally. GM concealed the existence of the defective SDM calibration~~  
 16 ~~from consumers including Plaintiff. Plaintiff would not have purchased the Class Vehicle, or~~  
 17 ~~would have paid less for it, if Defendants did not conceal material information about the defective~~  
 18 ~~SDM calibration.~~

19 51.—~~Plaintiff James Milstead ("Plaintiff" for the purposes of this paragraph) is an~~  
 20 ~~individual residing in Oxnard, CA. On September 11, 2021, Plaintiff purchased a 2012 Avalanche~~  
 21 ~~(for purposes of Plaintiff's allegations, the "Class Vehicle") from Escondido Auto Super Center~~  
 22 ~~in Escondido, CA. At the time, Plaintiff reasonably expected that the airbags and seatbelts would~~  
 23 ~~function in the event of a crash and had no way of knowing that it contained a dangerous and~~  
 24 ~~defective SDM calibration that could cause the airbags and seatbelts to fail during a crash. To the~~  
 25 ~~contrary, before acquiring the vehicle, Plaintiff viewed or heard commercials and reviews through~~  
 26 ~~television, radio, and the internet that touted the safety and reliability of Plaintiff's vehicle and~~  
 27 ~~GM vehicles generally. GM concealed the existence of the defective SDM calibration from~~  
 28 ~~consumers including Plaintiff. Plaintiff would not have purchased the Class Vehicle, or would~~

1 have paid less for it, if Defendants did not conceal material information about the defective SDM  
2 calibration.

3 52.—Plaintiff Ira Nash (“Plaintiff” for the purposes of this paragraph) is an individual  
4 residing in Honaker, VA. In or around 2017, Plaintiff purchased a 2014 GMC Denali Pickup (for  
5 purposes of Plaintiff’s allegations, the “Class Vehicle”) from Ramey Chevy Dealership in  
6 Richlands, VA. At the time, Plaintiff reasonably expected that the airbags and seatbelts would  
7 function in the event of a crash and had no way of knowing that it contained a dangerous and  
8 defective SDM calibration that could cause the airbags and seatbelts to fail during a crash. To the  
9 contrary, before acquiring the vehicle, Plaintiff viewed or heard commercials and reviews through  
10 television, radio, and the internet that touted the safety and reliability of Plaintiff’s vehicle and  
11 GM vehicles generally. GM concealed the existence of the defective SDM calibration from  
12 consumers including Plaintiff. Plaintiff would not have purchased the Class Vehicle, or would  
13 have paid less for it, if Defendants did not conceal material information about the defective SDM  
14 calibration.

15 53.—Plaintiff Patrick O’Connor (“Plaintiff” for the purposes of this paragraph) is an  
16 individual residing in Depew, NY. In or around 2018, Plaintiff purchased a 2013 Chevrolet  
17 Equinox (for purposes of Plaintiff’s allegations, the “Class Vehicle”) from Joe Basil Chevrolet in  
18 Depew, NY. At the time, Plaintiff reasonably expected that the airbags and seatbelts would  
19 function in the event of a crash and had no way of knowing that it contained a dangerous and  
20 defective SDM calibration that could cause the airbags and seatbelts to fail during a crash. To the  
21 contrary, before acquiring the vehicle, Plaintiff viewed or heard commercials and reviews through  
22 television, radio, and the internet that touted the safety and reliability of Plaintiff’s vehicle and  
23 GM vehicles generally. GM concealed the existence of the defective SDM calibration from  
24 consumers including Plaintiff. Plaintiff would not have purchased the Class Vehicle, or would  
25 have paid less for it, if Defendants did not conceal material information about the defective SDM  
26 calibration.

27 54.—Plaintiff Jorge Orihuela (“Plaintiff” for the purposes of this paragraph) is an  
28 individual residing in Hamburg, NJ. In or around October 2020, Plaintiff purchased a 2021

~~Chevrolet Tahoe (for purposes of Plaintiff's allegations, the "Class Vehicle") from Paul Miller Chevrolet, a GM dealership, located in West Caldwell, NJ. At the time, Plaintiff reasonably expected that the airbags and seatbelts would function in the event of a crash and had no way of knowing that it contained a dangerous and defective SDM calibration that could cause the airbags and seatbelts to fail during a crash. To the contrary, before acquiring the vehicle, Plaintiff viewed or heard commercials and reviews through television, radio, and the internet that touted the safety and reliability of Plaintiff's vehicle and GM vehicles generally. GM concealed the existence of the defective SDM calibration from consumers including Plaintiff. Plaintiff would not have purchased the Class Vehicle, or would have paid less for it, if Defendants did not conceal material information about the defective SDM calibration.~~

~~55.—Plaintiff Gary Owens ("Plaintiff" for the purposes of this paragraph) is an individual residing in Kenton, TN. In or about May 2019, Plaintiff purchased a 2012 GMC Sierra 1500 (for purposes of Plaintiff's allegations, the "Class Vehicle") from Herman Jenkins Motors, a GM dealership, located in Union City, Tennessee. At the time, Plaintiff reasonably expected that the airbags and seatbelts would function in the event of a crash and had no way of knowing that it contained a dangerous and defective SDM calibration that could cause the airbags and seatbelts to fail during a crash. To the contrary, before acquiring the vehicle, Plaintiff viewed or heard commercials and reviews through television, radio, and the internet that touted the safety and reliability of Plaintiff's vehicle and GM vehicles generally. GM concealed the existence of the defective SDM calibration from consumers including Plaintiff. Plaintiff would not have purchased the Class Vehicle, or would have paid less for it, if Defendants did not conceal material information about the defective SDM calibration.~~

~~56.—Plaintiff Larry Paetzold ("Plaintiff" for the purposes of this paragraph) is an individual residing in Brownwood, TX. On or around 2011, Plaintiff purchased a 2011 GMC Acadia (for purposes of Plaintiff's allegations, the "Class Vehicle") from Stevens Chevrolet in Herford, TX. At the time, Plaintiff reasonably expected that the airbags and seatbelts would function in the event of a crash and had no way of knowing that it contained a dangerous and defective SDM calibration that could cause the airbags and seatbelts to fail during a crash. To the~~

1 ~~contrary, before acquiring the vehicle, Plaintiff viewed or heard commercials and reviews through~~  
 2 ~~television, radio, and the internet that touted the safety and reliability of Plaintiff's vehicle and~~  
 3 ~~GM vehicles generally. GM concealed the existence of the defective SDM calibration from~~  
 4 ~~consumers including Plaintiff. Plaintiff would not have purchased the Class Vehicle, or would~~  
 5 ~~have paid less for it, if Defendants did not conceal material information about the defective SDM~~  
 6 ~~calibration.~~

7 57.—~~Plaintiff Ramiro Pereda ("Plaintiff" for the purposes of this paragraph) is an~~  
 8 ~~individual residing in San Leandro, CA. During 2016, Plaintiff purchased a pre-owned 2010~~  
 9 ~~Silverado 2500 HD (for purposes of Plaintiff's allegations, the "Class Vehicle") from Trucks and~~  
 10 ~~Toyz, a used vehicle dealership, located in Fairfield, CA. At the time, Plaintiff reasonably~~  
 11 ~~expected that the airbags and seatbelts would function in the event of a crash and had no way of~~  
 12 ~~knowing that it contained a dangerous and defective SDM calibration that could cause the airbags~~  
 13 ~~and seatbelts to fail during a crash. To the contrary, before acquiring the vehicle, Plaintiff viewed~~  
 14 ~~or heard commercials and reviews through television, radio, and the internet that touted the safety~~  
 15 ~~and reliability of Plaintiff's vehicle and GM vehicles generally. GM concealed the existence of~~  
 16 ~~the defective SDM calibration from consumers including Plaintiff. Plaintiff would not have~~  
 17 ~~purchased the Class Vehicle, or would have paid less for it, if Defendants did not conceal material~~  
 18 ~~information about the defective SDM calibration.~~

19 58.—~~Plaintiff Delana Petersen ("Plaintiff" for the purposes of this paragraph) is an~~  
 20 ~~individual residing in Lehi, UT. During May 2019, Plaintiff purchased a pre-owned 2016~~  
 21 ~~Chevrolet Silverado 2500 (for purposes of Plaintiff's allegations, the "Class Vehicle") from Larry~~  
 22 ~~H. Miller Super Ford in Salt Lake City, UT. At the time, Plaintiff reasonably expected that the~~  
 23 ~~airbags and seatbelts would function in the event of a crash and had no way of knowing that it~~  
 24 ~~contained a dangerous and defective SDM calibration that could cause the airbags and seatbelts to~~  
 25 ~~fail during a crash. To the contrary, before acquiring the vehicle, Plaintiff viewed or heard~~  
 26 ~~commercials and reviews through television, radio, and the internet that touted the safety and~~  
 27 ~~reliability of Plaintiff's vehicle and GM vehicles generally. GM concealed the existence of the~~  
 28 ~~defective SDM calibration from consumers including Plaintiff. Plaintiff would not have~~

~~purchased the Class Vehicle, or would have paid less for it, if Defendants did not conceal material information about the defective SDM calibration.~~

~~59.—Plaintiff Frank Pignone (“Plaintiff” for the purposes of this paragraph) is an individual residing in Derby, NY. On or around 2013, Plaintiff purchased a 2014 Chevy Silverado (for purposes of Plaintiff’s allegations, the “Class Vehicle”) from Emerling Chevy (Now Capilono Chevy) in Boston, NY. At the time, Plaintiff reasonably expected that the airbags and seatbelts would function in the event of a crash and had no way of knowing that it contained a dangerous and defective SDM calibration that could cause the airbags and seatbelts to fail during a crash. To the contrary, before acquiring the vehicle, Plaintiff viewed or heard commercials and reviews through television, radio, and the internet that touted the safety and reliability of Plaintiff’s vehicle and GM vehicles generally. GM concealed the existence of the defective SDM calibration from consumers including Plaintiff. Plaintiff would not have purchased the Class Vehicle, or would have paid less for it, if Defendants did not conceal material information about the defective SDM calibration.~~

~~60.—Plaintiff Dolly Price (“Plaintiff” for the purposes of this paragraph) is an individual residing in Kansas City, KS. On or around December 2013, Plaintiff purchased a pre-owned 2011 Chevrolet Traverse LTZ (for purposes of Plaintiff’s allegations, the “Class Vehicle”) from Cable Dahmer Chevrolet in Independence, MO. At the time, Plaintiff reasonably expected that the airbags and seatbelts would function in the event of a crash and had no way of knowing that it contained a dangerous and defective SDM calibration that could cause the airbags and seatbelts to fail during a crash. To the contrary, before acquiring the vehicle, Plaintiff viewed or heard commercials and reviews through television, radio, and the internet that touted the safety and reliability of Plaintiff’s vehicle and GM vehicles generally. GM concealed the existence of the defective SDM calibration from consumers including Plaintiff. Plaintiff would not have purchased the Class Vehicle, or would have paid less for it, if Defendants did not conceal material information about the defective SDM calibration.~~

~~61.—Plaintiff Michael Romania (“Plaintiff” for the purposes of this paragraph) is an individual residing in Benton, PA. In or about September 2021, Plaintiff purchased a Chevrolet~~

1 ~~Silverado 3500 HD (for purposes of Plaintiff's allegations, the "Class Vehicle") from Blaise~~  
 2 ~~Alexander Chevrolet, a GM dealership, located in Muncy, PA. At the time, Plaintiff reasonably~~  
 3 ~~expected that the airbags and seatbelts would function in the event of a crash and had no way of~~  
 4 ~~knowing that it contained a dangerous and defective SDM calibration that could cause the airbags~~  
 5 ~~and seatbelts to fail during a crash. To the contrary, before acquiring the vehicle, Plaintiff viewed~~  
 6 ~~or heard commercials and reviews through television, radio, and the internet that touted the safety~~  
 7 ~~and reliability of Plaintiff's vehicle and GM vehicles generally. GM concealed the existence of~~  
 8 ~~the defective SDM calibration from consumers including Plaintiff. Plaintiff would not have~~  
 9 ~~purchased the Class Vehicle, or would have paid less for it, if Defendants did not conceal material~~  
 10 ~~information about the defective SDM calibration.~~

11 62.—~~Plaintiff Donald Roxberry ("Plaintiff" for the purposes of this paragraph) is an~~  
 12 ~~individual residing in Durant, OK. In or around 2018, Plaintiff purchased a 2012 GMC Sierra (for~~  
 13 ~~purposes of Plaintiff's allegations, the "Class Vehicle") from Hudiburg Chevrolet in Oklahoma~~  
 14 ~~City, OK. At the time, Plaintiff reasonably expected that the airbags and seatbelts would function~~  
 15 ~~in the event of a crash and had no way of knowing that it contained a dangerous and defective~~  
 16 ~~SDM calibration that could cause the airbags and seatbelts to fail during a crash. To the contrary,~~  
 17 ~~before acquiring the vehicle, Plaintiff viewed or heard commercials and reviews through~~  
 18 ~~television, radio, and the internet that touted the safety and reliability of Plaintiff's vehicle and~~  
 19 ~~GM vehicles generally. GM concealed the existence of the defective SDM calibration from~~  
 20 ~~consumers including Plaintiff. Plaintiff would not have purchased the Class Vehicle, or would~~  
 21 ~~have paid less for it, if Defendants did not conceal material information about the defective SDM~~  
 22 ~~calibration.~~

23 63.—~~Plaintiff Lakiesha Shears ("Plaintiff" for the purposes of this paragraph) is an~~  
 24 ~~individual residing in Denver, CO. In or around 2021, Plaintiff purchased a 2010 Cadillac SRX~~  
 25 ~~(for purposes of Plaintiff's allegations, the "Class Vehicle") from the Besnibad Lot in Colorado.~~  
 26 ~~At the time, Plaintiff reasonably expected that the airbags and seatbelts would function in the~~  
 27 ~~event of a crash and had no way of knowing that it contained a dangerous and defective SDM~~  
 28 ~~calibration that could cause the airbags and seatbelts to fail during a crash. To the contrary, before~~

1 acquiring the vehicle, Plaintiff viewed or heard commercials and reviews through television,  
 2 radio, and the internet that touted the safety and reliability of Plaintiff's vehicle and GM vehicles  
 3 generally. GM concealed the existence of the defective SDM calibration from consumers  
 4 including Plaintiff. Plaintiff would not have purchased the Class Vehicle, or would have paid less  
 5 for it, if Defendants did not conceal material information about the defective SDM calibration.

6 64.—Plaintiff David Stalcup ("Plaintiff" for the purposes of this paragraph) is an  
 7 individual residing in Mammoth Springs, AR. In or about January 2018, Plaintiff purchased a  
 8 2011 GMC Sierra (for purposes of Plaintiff's allegations, the "Class Vehicle") from Mark Martin  
 9 Chevrolet, a GM dealership, located in Ash Flat, Arkansas. At the time, Plaintiff reasonably  
 10 expected that the airbags and seatbelts would function in the event of a crash and had no way of  
 11 knowing that it contained a dangerous and defective SDM calibration that could cause the airbags  
 12 and seatbelts to fail during a crash. To the contrary, before acquiring the vehicle, Plaintiff viewed  
 13 or heard commercials and reviews through television, radio, and the internet that touted the safety  
 14 and reliability of Plaintiff's vehicle and GM vehicles generally. GM concealed the existence of  
 15 the defective SDM calibration from consumers including Plaintiff. Moreover, Plaintiff  
 16 experiences issues with his 2011 GMC Sierra where the seatbelt does not lock. Plaintiff would  
 17 not have purchased the Class Vehicle, or would have paid less for it, if Defendants did not  
 18 conceal material information about the defective SDM calibration.

19 65.—Plaintiff Larry Swafford ("Plaintiff" for the purposes of this paragraph) is an  
 20 individual residing in Cedartown, GA. In May of 2013, Plaintiff purchased a 2013 GMC Sierra  
 21 (for purposes of Plaintiff's allegations, the "Class Vehicle") from John Thornton Chevrolet in  
 22 Carrolton, Georgia. At the time, Plaintiff reasonably expected that the Vehicles' airbags and  
 23 seatbelts would function in the event of a crash and had no way of knowing that it contained a  
 24 dangerous and defective SDM calibration that could cause the airbags and seatbelts to fail during  
 25 a crash. To the contrary, before acquiring the vehicle, Plaintiff viewed or heard commercials and  
 26 reviews through television, radio, and the internet that touted the safety and reliability of  
 27 Plaintiff's vehicle and GM vehicles generally. Plaintiff also spoke with at least one sales  
 28 representative without Defendants disclosing the SDM System Defect. In September of 2021,

1 ~~Plaintiff received a recall notice from GM for the replacement of a part of the airbag mechanism~~  
 2 ~~on the passenger side of his Vehicle due to a risk of deployment delivered shrapnel. Plaintiff has~~  
 3 ~~presented his Vehicle to GM dealers for airbag recall and numerous other repairs, yet GM never~~  
 4 ~~disclosed the SDM Calibration Defect. GM concealed the existence of the defective SDM~~  
 5 ~~calibration from consumers including Plaintiff. Moreover, Plaintiff experiences issues with his~~  
 6 ~~2011 GMC Sierra where the seatbelt does not lock. Plaintiff would not have purchased the Class~~  
 7 ~~Vehicle, or would have paid less for it, if Defendants did not conceal material information about~~  
 8 ~~the defective SDM calibration.~~

9       66.—~~Plaintiff Brian Swann (“Plaintiff” for the purposes of this paragraph) is an~~  
 10 ~~individual residing in Madison, AL. On or around 2017, Plaintiff purchased a 2010 Chevrolet~~  
 11 ~~Silverado (for purposes of Plaintiff’s allegations, the “Class Vehicle”) from Bob Chevrolet in~~  
 12 ~~Cincinnati, OH. At the time, Plaintiff reasonably expected that the airbags and seatbelts would~~  
 13 ~~function in the event of a crash and had no way of knowing that it contained a dangerous and~~  
 14 ~~defective SDM calibration that could cause the airbags and seatbelts to fail during a crash. To the~~  
 15 ~~contrary, before acquiring the vehicle, Plaintiff viewed or heard commercials and reviews through~~  
 16 ~~television, radio, and the internet that touted the safety and reliability of Plaintiff’s vehicle and~~  
 17 ~~GM vehicles generally. GM concealed the existence of the defective SDM calibration from~~  
 18 ~~consumers including Plaintiff. Plaintiff would not have purchased the Class Vehicle, or would~~  
 19 ~~have paid less for it, if Defendants did not conceal material information about the defective SDM~~  
 20 ~~calibration.~~

21       67.—~~Plaintiff Joseph Sweat (“Plaintiff” for the purposes of this paragraph) is an~~  
 22 ~~individual residing in Lilburn, GA. In or around 2015, Plaintiff purchased a 2009 Chevrolet~~  
 23 ~~Silverado (for purposes of Plaintiff’s allegations, the “Class Vehicle”) from Cole Automotive~~  
 24 ~~Sale in Monroe, GA. At the time, Plaintiff reasonably expected that the airbags and seatbelts~~  
 25 ~~would function in the event of a crash and had no way of knowing that it contained a dangerous~~  
 26 ~~and defective SDM calibration that could cause the airbags and seatbelts to fail during a crash. To~~  
 27 ~~the contrary, before acquiring the vehicle, Plaintiff viewed or heard commercials and reviews~~  
 28 ~~through television, radio, and the internet that touted the safety and reliability of Plaintiff’s~~



1 ~~vehicle and GM vehicles generally. GM concealed the existence of the defective SDM calibration~~  
 2 ~~from consumers including Plaintiff. Plaintiff would not have purchased the Class Vehicle, or~~  
 3 ~~would have paid less for it, if Defendants did not conceal material information about the defective~~  
 4 ~~SDM calibration.~~

5 68.—~~Plaintiff David Taylor (“Plaintiff” for the purposes of this paragraph) is an~~  
 6 ~~individual residing in Theodore, AL. On or around 2014, Plaintiff purchased a 2014 Chevy~~  
 7 ~~Silverado LT Pickup (for purposes of Plaintiff’s allegations, the “Class Vehicle”) from Terry~~  
 8 ~~Thompson Chevy Dealership in Daphne, AL. At the time, Plaintiff reasonably expected that the~~  
 9 ~~airbags and seatbelts would function in the event of a crash and had no way of knowing that it~~  
 10 ~~contained a dangerous and defective SDM calibration that could cause the airbags and seatbelts to~~  
 11 ~~fail during a crash. To the contrary, before acquiring the vehicle, Plaintiff viewed or heard~~  
 12 ~~commercials and reviews through television, radio, and the internet that touted the safety and~~  
 13 ~~reliability of Plaintiff’s vehicle and GM vehicles generally. GM concealed the existence of the~~  
 14 ~~defective SDM calibration from consumers including Plaintiff. Plaintiff would not have~~  
 15 ~~purchased the Class Vehicle, or would have paid less for it, if Defendants did not conceal material~~  
 16 ~~information about the defective SDM calibration.~~

17 69.—~~Plaintiff Walter Tooson (“Plaintiff” for the purposes of this paragraph) is an~~  
 18 ~~individual residing in Springfield, OH. On or around 2014, Plaintiff purchased a 2012 GMC~~  
 19 ~~Terrain (for purposes of Plaintiff’s allegations, the “Class Vehicle”) from Jeff Wiler in~~  
 20 ~~Springfield, OH. At the time, Plaintiff reasonably expected that the airbags and seatbelts would~~  
 21 ~~function in the event of a crash and had no way of knowing that it contained a dangerous and~~  
 22 ~~defective SDM calibration that could cause the airbags and seatbelts to fail during a crash. To the~~  
 23 ~~contrary, before acquiring the vehicle, Plaintiff viewed or heard commercials and reviews through~~  
 24 ~~television, radio, and the internet that touted the safety and reliability of Plaintiff’s vehicle and~~  
 25 ~~GM vehicles generally. GM concealed the existence of the defective SDM calibration from~~  
 26 ~~consumers including Plaintiff. Plaintiff would not have purchased the Class Vehicle, or would~~  
 27 ~~have paid less for it, if Defendants did not conceal material information about the defective SDM~~  
 28 ~~calibration.~~

1           15.     ~~70.~~ Plaintiff Richard Vargas (“Plaintiff” for the purposes of this paragraph) is an  
 2 individual residing in Menifee, California. In or around December 2012, Plaintiff purchased a  
 3 new 2012 Chevrolet Suburban (for purposes of Plaintiff’s allegations, the “Class Vehicle”) from  
 4 El Camino Real Chevrolet dealership located in Monterey Park, California. ~~At the time, On~~  
 5 information and belief for the reasons set forth herein, GM installed the SDM Calibration  
 6 Defect—which shut off the vehicle’s ability to deploy airbags in a crash after 45 milliseconds—in  
 7 Mr. Vargas’ SUV during the manufacturing process, and Mr. Vargas’ SUV contained the SDM  
 8 Calibration Defect at the time he purchased the vehicle. At the time of purchase, Plaintiff  
 9 reasonably expected that the Vehicles’ airbags and seatbelts would function in the event of a  
 10 crash and had no way of knowing that it contained a dangerous and defective SDM calibration  
 11 that could cause the airbags and seatbelts to fail during a crash. To the contrary, before acquiring  
 12 the Vehicle, Plaintiff viewed or heard commercials and reviews through television, radio, and the  
 13 internet that touted the safety and reliability of Plaintiff’s vehicle, including its “Five Star” safety  
 14 rating, and GM vehicles generally. Additionally, when at the dealership before making his  
 15 purchase, Plaintiff inquired about the airbags in the Class Vehicle. GM concealed the existence of  
 16 the defective SDM calibration from consumers including Plaintiff. Plaintiff would not have  
 17 purchased the Class Vehicle, or would have paid less for it, if Defendants did not conceal material  
 18 information about the defective SDM calibration.

19           ~~71.—Plaintiff Warren Whitsey (“Plaintiff” for the purposes of this paragraph) is an~~  
 20 ~~individual residing in Indianapolis, IN. On or around 2021, Plaintiff purchased a 2013 Yukon XL~~  
 21 ~~(for purposes of Plaintiff’s allegations, the “Class Vehicle”) from Andy Moore VW in Avon, IN.~~  
 22 ~~At the time, Plaintiff reasonably expected that the airbags and seatbelts would function in the~~  
 23 ~~event of a crash and had no way of knowing that it contained a dangerous and defective SDM~~  
 24 ~~calibration that could cause the airbags and seatbelts to fail during a crash. To the contrary, before~~  
 25 ~~acquiring the vehicle, Plaintiff viewed or heard commercials and reviews through television,~~  
 26 ~~radio, and the internet that touted the safety and reliability of Plaintiff’s vehicle and GM vehicles~~  
 27 ~~generally. GM concealed the existence of the defective SDM calibration from consumers~~  
 28

1 including Plaintiff. Plaintiff would not have purchased the Class Vehicle, or would have paid less  
2 for it, if Defendants did not conceal material information about the defective SDM calibration.

3 72.—Plaintiff Denise Wilson (“Plaintiff” for the purposes of this paragraph) is an  
4 individual residing in Fayette, MS. On or around February 2020, Plaintiff purchased a pre-owned  
5 2019 Chevrolet Silverado 1500 (for purposes of Plaintiff’s allegations, the “Class Vehicle”) from  
6 Gray Daniels Chevrolet, located in Jackson, MS. At the time, Plaintiff reasonably expected that  
7 the airbags and seatbelts would function in the event of a crash and had no way of knowing that it  
8 contained a dangerous and defective SDM calibration that could cause the airbags and seatbelts to  
9 fail during a crash. To the contrary, before acquiring the vehicle, Plaintiff viewed or heard  
10 commercials and reviews through television, radio, and the internet that touted the safety and  
11 reliability of Plaintiff’s vehicle and GM vehicles generally. GM concealed the existence of the  
12 defective SDM calibration from consumers including Plaintiff. Plaintiff would not have  
13 purchased the Class Vehicle, or would have paid less for it, if Defendants did not conceal material  
14 information about the defective SDM calibration.

15 73.—Plaintiff Carl Wurmlinger (“Plaintiff” for the purposes of this paragraph) is an  
16 individual residing in Croswell, MI. In or around 2014, Plaintiff purchased a 2014 GMC Sierra  
17 (for purposes of Plaintiff’s allegations, the “Class Vehicle”) from Saint Claire Automotive in  
18 Saint Claire, Michigan. At the time, Plaintiff reasonably expected that the airbags and seatbelts  
19 would function in the event of a crash and had no way of knowing that it contained a dangerous  
20 and defective SDM calibration that could cause the airbags and seatbelts to fail during a crash. To  
21 the contrary, before acquiring the vehicle, Plaintiff viewed or heard commercials and reviews  
22 through television, radio, and the internet that touted the safety and reliability of Plaintiff’s  
23 vehicle and GM vehicles generally. GM concealed the existence of the defective SDM calibration  
24 from consumers including Plaintiff. Plaintiff would not have purchased the Class Vehicle, or  
25 would have paid less for it, if Defendants did not conceal material information about the defective  
26 SDM calibration.

1           **B.     Defendants**

2           16.     General Motors LLC (“GM LLC”) is a Delaware limited liability company with its  
3 principal place of business located at 300 Renaissance Center, Detroit, Michigan, and is a citizen  
4 of the States of Delaware and Michigan. The sole member and owner of GM LLC is General  
5 Motors Holdings LLC.

6           17.     General Motors Holdings LLC (“GM Holdings”) is a Delaware limited liability  
7 company with its principal place of business in Detroit, Michigan, and is a citizen of the States of  
8 Delaware and Michigan. The sole member and owner of GM Holdings is General Motors  
9 Company.

10          18.     General Motors Company (“GM Parent”) is a Delaware corporation with its  
11 principal place of business in Detroit, Michigan, and is a citizen of the States of Delaware and  
12 Michigan. GM Parent’s only asset is its 100% ownership interest in GM Holdings. In public SEC  
13 filings, GM Parent states: “We design, build and sell cars, trucks, crossovers and automobile parts  
14 worldwide.” GM Parent sells vehicles throughout the United States “through [its] dealer network  
15 to retail customers.” As further noted in SEC filings, GM Parent is also responsible for making  
16 reports to NHTSA related to vehicle safety and making determinations as to vehicle recalls.<sup>3</sup>

17          19.     Each of GM LLC, GM Holdings, and GM Parent operates out of GM’s Global  
18 Headquarters in Detroit, Michigan.

19          20.     In June 2009, ~~General Motors Corporation~~ (“Old GM”) filed for bankruptcy.  
20 Defendants were then created on or about July 10, 2009, in connection with the sale of  
21 substantially all of Old GM’s assets pursuant to a Master Sale and Purchase Agreement. As a  
22 result of the sale, GM LLC acquired substantially all of Old GM’s books, records, and personnel.  
23 GM LLC then transferred some of these assets to GM Holdings (formed shortly after the  
24 bankruptcy sale). Defendants thereby acquired from Old GM the knowledge about the SDM  
25 Calibration Defect (defined below) that those books, records, and personnel held. GM Parent and  
26 GM LLC also took responsibility for any necessary recalls of Old GM vehicles going forward.

27  
28           <sup>3</sup> See General Motors Company’s Form 10-K for fiscal year 2019.

21. The causes of action in this Complaint are directed to GM Parent, GM Holdings, and GM LLC and are based on their misconduct.

### **III. JURISDICTION, VENUE, AND INTRADISTRICT ASSIGNMENT**

22. This Court has original jurisdiction over this action pursuant to the Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1332(d), because at least one Class member is of diverse citizenship from one Defendant, there are more than 100 Class members, and the aggregate amount in controversy exceeds \$5 million, exclusive of interest and costs.

23. This Court has personal jurisdiction over Defendants under California Code of Civil Procedure section 410.10. ~~The Court has pendent jurisdiction as to the claims of Plaintiffs that arose in states other than California.~~

24. Venue is proper in this District under 28 U.S.C. § 1391, and assignment is proper to this division under N.D. Cal. L.R. 3-2, because a substantial part of the events or omissions which give rise to the claims occurred in this District, and because Defendants have caused harm to Class members residing in this District, including Plaintiff ~~Pereda~~Ray. GM conducts substantial business, including through numerous dealerships, and marketed, advertised, sold, and leased Class Vehicle in this District.

### **IV. GENERAL FACTUAL ALLEGATIONS**

#### **A. SDMs are supposed to detect crashes and control airbags and seatbelts.**

25. Car crashes kill or seriously injure hundreds of thousands of people every year. Because of this risk, the federal government requires automobile manufacturers to include critical safety features—seatbelts and airbags—in all vehicles sold in the United States. This life-saving equipment has been mandatory in passenger vehicles since 1997. See 49 U.S.C. § 30127.

26. ~~1. Federal law requires that motor vehicles use safety features to protect occupants in the event of a crash.~~ These features include seatbelt pretensioners, which tighten seatbelts to secure the occupants, and airbags, which are cushions that rapidly inflate from the steering wheel and other areas of the vehicle. During an accident, seatbelt pretensioners hold vehicle occupants in place, and airbags buffer or prevent impact between occupants and hard structures in the

1 vehicle. Without the airbags, slamming into the hard structures (such as the steering wheel)  
 2 during a crash can ~~cause~~ and has caused serious injuries ~~or~~ and death.

3 27. ~~2.~~ When functioning properly, the combination of seatbelts and airbags is highly  
 4 effective in reducing the safety risk in automobile collisions. NHTSA reports that the use of  
 5 seatbelts and airbags reduces fatality risk by **61 percent** compared to an unbelted occupant in a  
 6 vehicle without airbags.<sup>4</sup> From 1987 to 2017, an estimated 50,457 lives were saved because  
 7 frontal airbags deployed during a crash.<sup>5</sup>

8 28. ~~3.~~ Although airbags work effectively to protect occupants when necessary, they are  
 9 not meant to deploy with every impact. A crash may be of lower intensity (e.g., a low-speed  
 10 fender bender in a parking lot) such that the seatbelt alone will be sufficient protection for the  
 11 occupant.<sup>6</sup> Airbags are designed to deploy in “moderate to severe” frontal or near-frontal crashes.  
 12 A “moderate to severe” frontal crash is the equivalent of hitting a solid, fixed barrier at 8-14 miles  
 13 per hour or higher.<sup>7</sup>

14 29. ~~4.~~ Seatbelt and airbag systems are known as “passive” safety systems because,  
 15 when they are needed, they are supposed to operate automatically (meaning, the driver does not  
 16 need to hit a button to deploy the airbag). They use sophisticated hardware components and  
 17 software to activate and deploy the seatbelts and airbags systems automatically.

18 30. ~~5.~~ The “brain” behind this operation is the airbag control unit or “ACU” (also  
 19 known as an Electronic Control Unit or “ECU”). GM refers to this component as the “Sensing  
 20 and Diagnostic Module” or “SDM,” and that term is used throughout this Complaint. SDMs are  
 21 effectively computers that control the car’s safety systems. They are intended, where  
 22 ~~necessary~~ appropriate, to issue a “command” to deploy airbags and tighten seatbelts to prevent or  
 23 mitigate injury to ~~the~~ vehicle occupants in a crash.

24  
 25 \_\_\_\_\_  
 26 <sup>4</sup> U.S. Department of Transportation, NHTSA, *Fatalities in Frontal Crashes Despite Seat Belts and Airbags*, NHTSA Technical Report No. DOT HS 811 202 (September 2009).

27 <sup>5</sup> NHTSA, Air Bags Overview. Available at: <https://www.nhtsa.gov/equipment/air-bags> (last  
 28 visited ~~August 4~~ January 26, 2021 2023).

<sup>6</sup> Dr. Ching-Yao Chan, *Fundamentals of Crash Sensing in Automotive Airbag Systems*. Copyright  
 Society of Automotive Engineers, (2000), at p. 50.

<sup>7</sup> Air Bags Overview, *supra* note 5.

31. The SDM operates in three basic phases. ~~First, during regular vehicle operation, the SDM is set:~~

a. ~~6.~~ First, during regular vehicle operation, the SDM sits in a resting or “normal” mode. In this mode, the SDM constantly receives signals from sensors placed throughout the vehicle, which collect and report information on inputs such as acceleration, wheel speed, brake pressure, and impacts.<sup>8</sup> The SDM monitors and interprets these signals to determine whether the vehicle is involved (or about to be involved) in a crash.

b. ~~7.~~ Second, while monitoring these signals in “normal” mode, if and when the SDM detects an irregular input that suggests a potential crash, it “wakes up” to search for further confirmation of a crash (as opposed to, for example, an irregular input from slamming on the brakes and then avoiding a collision). In this second stage—known as “wake up” or “standby” mode—the SDM’s crash-sensing software algorithm is engaged to quickly decipher crash status and respond.<sup>9</sup> After ~~this~~ “wake up” mode is ~~initially~~ triggered by an irregular input, if additional inputs confirm a moderate to severe frontal crash, the SDM *should* issue a command to “fire” the airbag and/or tighten the seatbelts as needed.<sup>10</sup>

c. ~~8.~~ Third, the final phase in this sequence is the “reset” phase. From “wake up” mode, after it detects that a crash or a potential crash has fully completed, (i.e., that the vehicle has returned to normal operation after an irregular input) the SDM ultimately returns to its normal operating state through “resetting.”

32. ~~9.~~ A vehicle striking a pothole illustrates this three-phase sequence. The vehicle first operates with the SDM in “normal” mode as it drives down the road. Then, suddenly, the driver hits an unseen pothole. This jolt from hitting the pothole (and/or related inputs like deceleration) will trigger the SDM to enter “wake up” mode where it searches for more inputs.

<sup>8</sup> Clemson University Vehicular Electronics Laboratory, “Airbag Deployment Systems.” Available at: [https://cecas.clemson.edu/cvel/auto/systems/airbag\\_deployment.html](https://cecas.clemson.edu/cvel/auto/systems/airbag_deployment.html) (last visited ~~August 4, January 26, 2021~~ 2023).

<sup>9</sup> John Pearley Huffman, “The Physics of Airbags,” *Car & Driver*, June 14, 2011. Available at: <https://www.caranddriver.com/features/a15121591/the-physics-of-airbags-feature> (last visited ~~August 4, January 26, 2021~~ 2023).

<sup>10</sup> Jesse Kendall, P.E., and Kenneth Solomon, Ph.D., “Airbag Deployment Criteria” at p. 11. Available at: <https://www.experts.com/content/articles/Kenneth-Solomon-Airbag-Paper.pdf> (last visited ~~August 4, January 26, 2021~~ 2023).



1 Awake, the SDM quickly ~~asking~~asks: “How fast is the vehicle slowing down? Is the front bumper  
2 crushed? Is the vehicle speeding back up normally?” and reacting in turn.<sup>11</sup>

3 33. If the SDM senses that the vehicle returns to normal operation and continues down  
4 the road, it will stop looking for confirmation of a crash and reset ~~back~~ to normal ~~after it~~  
5 ~~determines the danger has passed~~operation. On the other hand, if, after it hits the pothole, the  
6 vehicle veers out of its lane and crashes into another vehicle head on, the SDM should detect this  
7 second input and fire the airbag.<sup>12</sup>

8 34. This entire sequence—from sensing an irregular signal (the pothole), to waking up  
9 and searching for confirmation of a crash, to firing the airbag where needed—might take only  
10 fractions of a second. Indeed, a typical “crash duration” in a frontal, vehicle-to-barrier collision  
11 lasts for approximately 80-150 milliseconds (0.08-0.15 seconds).<sup>13</sup> For that reason, timing this  
12 sequence properly is critically important to ensure that the seatbelts are tightened, and the airbags  
13 deploy ~~to~~ to protect the occupants when they need to.

14 **B. GM used a dangerous and defective SDM software calibration in its trucks**  
15 **and SUVs.**

16 35. Throughout the three-phase sequence described above, SDMs rely on software  
17 algorithms to interpret signals, estimate crash dynamics, and issue a “deploy” or “do not deploy”  
18 command to the safety systems. For the SDM to function as intended, the software that controls it  
19 must be designed to recognize and ~~react to~~ respond to real-world crashes so that the airbags  
20 inflate and seatbelts tighten when they are needed.

21 36. Crash sensing occurs in “real-time,” ~~meaning.~~ This means that the sensing  
22 algorithm can only examine a limited window of data to predict and judge the severity of crash  
23 events before conclusion, so that the airbags can deploy and protect the occupant on impact.<sup>14</sup> A  
24 decision to “deploy” the airbags should occur when certain pre-set thresholds ~~set to that~~ tell the  
25 SDM a crash is severe enough (i.e., ~~a~~ a moderate to severe frontal collision) are met or exceeded.

27 <sup>11</sup> Solomon, *supra* note 10, at p. 11.

28 <sup>12</sup> *Id.* at p. 8.

<sup>13</sup> Chan, *supra* note 6, at p. 169.

<sup>14</sup> Chan, *supra* note 6, at p. 95.



1 These deployment thresholds are programmed into the SDM software through a process in which  
2 engineers “calibrate” the software algorithm in the vehicle.

3 37. In the Class Vehicles, the software calibration that controls how and when the  
4 SDM detects accidents and deploys the safety ~~system~~ systems contains a serious defect (the  
5 “SDM Calibration Defect”). Specifically, for frontal crashes, GM calibrated the SDM to prevent  
6 deployment of airbags and pretensioners more than 45 milliseconds after it enters “wake up”  
7 mode.<sup>15</sup> GM did this by increasing the deployment thresholds to unattainable values 45  
8 milliseconds into the crash sequence. With this calibration in place, no matter how severe the  
9 inputs the SDM received immediately after 45 milliseconds, the airbags and pretensioners ~~would~~  
10 will not deploy until a reset has occurred.

11 38. This ~~defect~~ defective calibration was no accident; rather, as detailed below, GM  
12 included it by design when it modified the SDM software program (originally known as ALGO-  
13 S) in the Class Vehicles to include it.

14 39. In affirmatively blocking these critical safety features after 45 milliseconds, GM  
15 greatly and needlessly increased the risk of injury and death in a variety of frontal crashes.  
16 Specifically, the ~~defect~~ SDM Calibration Defect manifests in frontal crashes that ~~endure for 45~~  
17 ~~milliseconds or longer and~~ require airbag deployment or seatbelt tightening after 45 milliseconds  
18 into the crash, and before the SDM resets.

19 40. For example, this includes frontal crashes with multiple, distinct points of impact  
20 known as “concatenated” events. A vehicle that first hits a curb and then veers and hits a tree, or  
21 first hits a speed bump and then crashes into the vehicle in front of it, are examples of  
22 concatenated crashes. By their nature, concatenated accidents involve multiple discrete inputs for  
23 the SDM to detect during a crash sequence.

24 41. In concatenated crashes, the first part of the incident (hitting a curb) sends the  
25 SDM into its “wake up” or “stand by” mode. The initial curb hit does not trigger the airbag or  
26

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27 <sup>15</sup> At this early stage, Plaintiffs note that the interpretation of time recorded by the SDM software  
28 and in related Crash Data Reports is complex. The 45-millisecond timing described in this  
complaint refers to the value as calculated in the software, as opposed to 45 milliseconds in linear  
time.

1 tighten the seatbelt, but the SDM “wakes up” to confirm whether further irregular signals will  
 2 follow and indicate a need for the seatbelts or airbags. In the Class Vehicles—because of the  
 3 software calibration that controls the SDM—the “wake up” mode lasts for just 45 milliseconds  
 4 after the first irregular signal. After that time, and by GM’s design, the deployment thresholds in  
 5 the software drastically increase, such that no further input, no matter how severe, could exceed  
 6 the thresholds and trigger the ~~airbag~~ airbags to deploy and/or seatbelts to tighte<sup>15</sup>n. As detailed in  
 7 this section, the triggering thresholds are pre-set inputs in the software that tell the SDM that a  
 8 crash is severe enough to deploy an airbag.

9 42. In addition to concatenated crashes, the ~~defect~~ SDM Calibration Defect is also  
 10 implicated in frontal crashes that increase in severity and require airbag deployment or seatbelt  
 11 tightening after an initial, “soft” impact. These types of crashes are referred to herein as  
 12 “prolonged” or “long-soft” crash onsets. This would include, for example, a crash into another  
 13 vehicle’s bumper which—because the bumper is comparatively “soft”—may take time before the  
 14 “soft” bumper collapses, and a “hard” impact into the engine compartment begins.<sup>16</sup> “Soft”  
 15 crashes involve a “relatively long crash duration” that may last 20-50 percent longer than a head-  
 16 on crash into a rigid barrier, like a cement wall.<sup>17</sup>

17 43. In a prolonged onset crash, the initial impact into a “soft” surface, such as a  
 18 bumper, starts the SDM clock ticking. Depending on the crash conditions such as speed, road  
 19 incline, angle of impact, weather, ice on the road, etc., this “soft” impact may ~~last longer than~~ not  
 20 require airbag deployment before 45 milliseconds has elapsed. Throughout the “soft” impact, the  
 21 SDM will be in wake-up mode to search for a confirmatory signal. But it will not find another  
 22 input sufficient to trigger the airbags from the “soft” impact. As explained above, in the Class  
 23 Vehicles, the SDM clock effectively times out when the 45-millisecond mark hits. So, if the crash  
 24 proceeds through the “soft” layers and into the engine compartment of another vehicle at say, 70

25  
 26 <sup>15</sup> ~~As detailed in this section, the triggering thresholds are pre-set inputs in the software that tell~~  
 27 ~~the SDM that a crash is severe enough to deploy an airbag.~~

28 <sup>16</sup> An example of a “soft” crash is where a vehicle crashes into a deformable barrier, or crashes at  
 an angle, which will result in a “softer” impact than a head-on crash into a rigid barrier (which is  
 a “hard” crash). Chan, *supra* note 6, at p. 40.

<sup>17</sup> Chan, *supra* note 6, at p. 40.

1 75 milliseconds, no airbag or seatbelt deployment is possible no matter how severe the later,  
2 “hard” impact gets.

3 44. In practice, this means that the airbags and seatbelt pretensioners in the Class  
4 Vehicles can *only* fire within 45 milliseconds of a first, irregular signal. If a second-, irregular  
5 signal occurs after 45 milliseconds, but before the SDM has reset, the SDM purposefully, by  
6 design, disregards ~~signals that the second signal, even if it~~ would otherwise trigger airbag  
7 deployment and/or seatbelts to tighten.

8 45. The net result is a “dead zone” starting just 45 milliseconds into a crash, after  
9 which vehicle occupants are completely vulnerable before the SDM software resets. The dead  
10 zone lasts until the SDM detects that the crash has ended completely (meaning that the irregular  
11 signals have concluded, and the vehicle has resumed normal operation), and then resets back to  
12 normal mode. After the SDM has reset, additional impacts or irregular inputs register as new  
13 events, triggering the process to begin anew.

14 46. This significant gap in protection after 45 milliseconds is unreasonably dangerous  
15 because accidents—particularly complicated, real-world accidents—are not necessarily  
16 completed at that point. In many cases, a crash continues- in the “dead zone,” and airbags and  
17 ~~seatbelts are needed, well after~~ the thresholds for airbag and seatbelt deployment are met during  
18 that time. Yet, GM’s SDM software calibration in the Class Vehicles ~~makes it impossible for~~  
19 prevents deployment of the airbags ~~to deploy and seatbelts to tighten and seatbelt pretensioners~~ in  
20 the “dead zone” ~~in which while~~ a crash ~~may is~~ still ~~be~~ underway—which is a serious, unjustified,  
21 and dangerous safety defect. Indeed, even GM’s own cars division includes a significantly longer  
22 window for potential deployment.

23 C. **GM knew that the SDM Calibration Defect was dangerous and unjustified**  
24 **but has failed to warn or compensate consumers.**

25 47. GM knew or had reason to know of the SDM Calibration Defect and the risks it  
26 entails from at least July 10, 2009, when GM acquired substantially all of Old GM’s books,  
27 records, and personnel, and the knowledge about the defective SDM software calibration those  
28 books, records, and personnel held. GM has continued to acquire knowledge—based on lawsuits

1 implicating the SDM Calibration Defect and hundreds of publicly reported accidents with airbag  
2 and seatbelt failures—from 2009 to the present.

3 48. Nonetheless, GM has continued to conceal this problem and the pattern of  
4 accidents, injuries, and deaths that have resulted from it. GM has failed to share this information  
5 with the consumers who paid for and drive these Class Vehicles every day.

6 49. It should come as no surprise that GM has unreasonably and unsafely delayed  
7 disclosure of the SDM Calibration Defect. Indeed, GM has a recent history of attempts to avoid  
8 the costs, potential liabilities, and reputational harms from a safety recall for Takata airbags and  
9 seems to have repeated that same tactic here.

10 50. As is now public knowledge, millions of GM vehicles contain the dangerous and  
11 defective Takata airbag inflators that can explode with too much force and spray metal shrapnel  
12 into vehicle passenger compartments. While the dangers of these Takata airbags were widely  
13 known for years, GM lobbied regulators to delay a recall for its affected vehicles to avoid a  
14 resulting hit to its profits.<sup>18</sup> In 2016, GM reported that recalling its vehicles with Takata inflators  
15 would cost hundreds of millions of dollars.<sup>19</sup>

16 51. Consumers brought a putative class action seeking redress. *See In re Takata*  
17 *Airbag Product Liability Litigation*, Case No. 14-cv-240009, Dkt. 2750, (S.D. Fl.). While other  
18 vehicle manufacturers had earlier and voluntarily recalled their vehicles with Takata airbags, it  
19 was only years later, with that consumer litigation pending, that GM finally issued a belated  
20 recall. And importantly, it did so only after regulators from NHTSA denied GM's petition for  
21 inconsequentiality, in which it attempted to argue that a recall was not necessary.<sup>20</sup>

22 52. Here, as in *Takata*, GM knew or should have known that the SDM software  
23 calibration [strategy](#) in the Class Vehicles—which includes a dead zone that prevents the airbag  
24

25 <sup>18</sup> “GM seeks to delay recall of 1 million vehicles with Takata air bag inflators.” *Reuters*,  
26 September 16, 2016. Available at: [https://www.reuters.com/article/us-gm-recall/gm-seeks-to-](https://www.reuters.com/article/us-gm-recall/gm-seeks-to-delay-recall-of-1-million-vehicles-with-takata-air-bag-inflators-idUSKCN11M27N)  
27 [delay-recall-of-1-million-vehicles-with-takata-air-bag-inflators-idUSKCN11M27N](https://www.reuters.com/article/us-gm-recall/gm-seeks-to-delay-recall-of-1-million-vehicles-with-takata-air-bag-inflators-idUSKCN11M27N) (last visited  
~~August 4, 2021~~ [January 26, 2023](#)).

<sup>19</sup> *Id.*

28 <sup>20</sup> “GM will recall 7 million vehicles for air bag issue worldwide.” *Reuters*, November 23, 2020.  
Available at: [https://www.reuters.com/article/us-gm-recall/gm-will-recall-7-million-vehicles-for-](https://www.reuters.com/article/us-gm-recall/gm-will-recall-7-million-vehicles-for-air-bag-issue-worldwide-idUSKBN2831TH)  
[air-bag-issue-worldwide-idUSKBN2831TH](https://www.reuters.com/article/us-gm-recall/gm-will-recall-7-million-vehicles-for-air-bag-issue-worldwide-idUSKBN2831TH) (last visited ~~August 4, 2021~~ [January 26, 2023](#)).

1 and seatbelts from deploying after 45 ~~milliseconds—was~~ milliseconds until the SDM resets—was  
 2 dangerous. Nonetheless, GM kept using it anyway, did not recall or repair the Class Vehicles to  
 3 correct it, and still has not told consumers about it.

4 **1. Old GM recklessly downplayed serious risks of injury when it chose to**  
 5 **include the SDM Calibration Defect in the Class Vehicles.**

6 53. In general, the vehicle manufacturer ~~sets~~ provides the requirements to set the  
 7 deployment thresholds in the SDM software calibration that will trigger a command to fire the  
 8 airbags and/or tighten the seatbelts. The vehicle manufacturer uses results from laboratory crash  
 9 testing to inform these parameters.<sup>21</sup>

10 54. But laboratory results are not sufficient in themselves, because real-world  
 11 accidents—which can occur from multiple angles and involve inputs from myriad variables like  
 12 weather, temperature, or incline—will differ from the testing environment.<sup>22</sup> For that reason,  
 13 manufacturers must exercise appropriate care to design crash sensing frameworks that function to  
 14 keep people safe in the real world.

15 55. As relevant to the defect here, Old GM worked with ~~an external team of engineers~~  
 16 ~~from~~ Delco Electronics (later called Delphi Electronics) ~~to,~~ now known as Aptiv) to select and  
 17 install SDM models and develop the SDM software program used in the Class Vehicles, starting  
 18 with Model Year 1999. ~~The team from Delco developed a proposed software program, known as~~  
 19 ~~ALGO-S, which it presented to Old GM for review.~~ As to the physical component, Old GM  
 20 installed Delco SDMs in many of its vehicles, including all the Class Vehicles. The model names  
 21 for Delco SDMs have changed over time, and have included, from earliest to latest, models  
 22 known as the SDM-GS,<sup>23</sup> SDM-11, SDM30, and others. GM continued to use Delco SDMs and  
 23 the defective calibration in its vehicles after it was formed in 2009, including in all the Class  
 24 Vehicles.

25  
 26  
 27 <sup>21</sup> Huffman, *supra* note 9.

28 <sup>22</sup> Solomon, *supra* note 10, at 13.

<sup>23</sup> The SDM-GS is the SDM model included in Mr. Nossar's 2005 Trailblazer, which would have  
been in development during Mr. Caruso's tenure with Delco, which ended in 2006.

1           56. In addition to the Delco hardware, GM also worked with Delco to develop and  
 2 implement the software that controls the SDMs. To that end, Delco developed a proposed  
 3 software program, known originally as ALGO-S, and presented it to Old GM for review.

4           57. 4. During this time, Old GM divided the design and development of its vehicles  
 5 into a “cars” group and a “trucks” group, with the trucks group responsible for design,  
 6 development, and production of larger model trucks and SUVs. After it reviewed the Delco  
 7 team’s proposed SDM software algorithm, ALGO-S, the trucks group insisted on adding the 45-  
 8 millisecond cut off described above when it calibrated that program for use in its trucks and  
 9 SUVs. ~~On information and belief, the trucks group proposed this cutoff based on test results~~  
 10 ~~which indicated that frontal barrier accidents in its trucks and SUVs would be complete within 45~~  
 11 ~~milliseconds or less in laboratory conditions.~~

12           58. The 45 millisecond cut off was dictated by GM trucks as part of its calibration  
 13 strategy for all vehicles within the fleet. This means that regardless of any differences across  
 14 makes and model years, all vehicles within the group include SDM software that was calibrated  
 15 to meet GM trucks’ guiding philosophy for when and how the safety systems will deploy, which  
 16 included the SDM Calibration Defect.

17           59. On information and belief, the trucks group insisted on this cutoff based on test  
 18 results which indicated that frontal-barrier accidents (i.e., a simulated, single-impact crash into a  
 19 hard barrier) in its trucks and SUVs would not require airbags after 45 milliseconds or less in  
 20 laboratory conditions.

21           60. 5. In response, the Delco team expressly warned the trucks group that such an  
 22 aggressive cutoff could fail to capture additional signals in complex crashes outside of the  
 23 laboratory, leaving occupants completely unprotected during prolonged onset crashes or crashes  
 24 with multiple impact points. ~~The trucks group insisted, however, and the 45 millisecond cutoff~~  
 25 ~~was added in the SDM software calibration for GM trucks and SUVs.~~ On information and belief,  
 26 documents, records, and personnel reflecting GM trucks’ insistence—over Delco’s objection—to  
 27 include this cutoff were passed on from Old GM to New GM in 2009.

61. ~~6. On information and belief, documents, records, and personnel reflecting GM trucks' insistence over Delco's objection to include this cutoff were passed on from Old GM to New GM in 2009. On GM's own cars group, and on~~ information and belief, other major vehicle manufacturers throughout the industry ~~include a significantly longer window for the~~ SDM to detect a potential accident and deploy the airbags and seatbelts. Indeed, in the ALGO-S program as it was originally designed by Delco, the window in which the airbags and seatbelts can deploy in a crash is ~~up to at least 150 milliseconds—over three times the interval that GM trucks added in the defective calibration~~ multiple times the level set by GM Trucks (up to 150 milliseconds). Tellingly, after the Delco team repeated the same warnings about the truck group's proposed 45-millisecond cutoff to GM's cars group, the cars group rejected the shorter cutoff. Instead, the cars group used the ALGO-S software with the Delco-recommended period ~~of 150 milliseconds for deployment~~ that was two or even three times longer than the GM Trucks group's proposal. GM ignored this decision by the cars group in insisting on the dangerous calibration.

62. ~~8.~~ Delco's original 150-millisecond window allows for airbag and seatbelt deployment in real-world frontal crashes, which themselves can endure for up to 150 milliseconds.<sup>2324</sup> When GM trucks added the defective 45-millisecond cutoff to the software calibration in the Class Vehicles, it prematurely, and dangerously, prevented the airbags and seatbelts from functioning when a frontal crash may still be well underway.

63. Given their serious concerns, Mr. Caruso and his Delco team refused to release the defective software calibration for use in GM trucks and SUVs until Old GM signed a disclaimer of Delco's liability for the modified calibration. The trucks group still insisted on the defective calibration, signed the disclaimer, and the 45-millisecond cutoff was added in the SDM software calibration as used in GM trucks and SUVs.<sup>25</sup>

64. This defective calibration was included in all of the trucks and SUVs under the direction of GM's trucks group, including all the Class Vehicles. This is so because, as explained

<sup>2324</sup> Chan, *supra* note 6, at p. 169.

<sup>25</sup> See Objection to Defendants' Motion for Partial Summary Judgment, *McCoy v. General Motors LLC*, Case No. X03- HHD-CV-20-6142910-S (Conn. Sup. Ct), available at: <https://civlinquiry.jud.ct.gov/DocumentInquiry/DocumentInquiry.aspx?DocumentNo=23354481>.



1 above, the abrupt cutoff was part of a calibration philosophy that is not vehicle dependent, i.e., it  
 2 was a decision on the overall strategy for safety system deployment that applied to all vehicles  
 3 within the group, including all the Class Vehicles.

4 65. In practice, this meant that GM Trucks leadership set the calibration strategy for  
 5 all vehicles within the Trucks group (including all the Class Vehicles), and the software engineers  
 6 tasked with implementing that strategy for individual vehicle platforms were obligated to follow  
 7 that strategy for all vehicles within the group—the strategy was not set, or adapted, at the  
 8 individual vehicle level.

9 66. This group-level approach to vehicle software is logical from a cost and resources  
 10 standpoint; developing software algorithms is time intensive and expensive, making it effective  
 11 and ordinary practice to develop one algorithm for use across multiple vehicle makes and models.

12 67. This typical practice of using the same SDM software strategy for groups of  
 13 vehicles is evidenced by a prior recall conducted by GM in September 2016. Specifically, GM  
 14 previously recalled some 3,640,000 vehicles across three different model years (from 2014 to  
 15 2017) due to a “software defect” present in the SDM software in all of those vehicles. As GM  
 16 described it, the SDM software in *all of these* vehicles included the same “oscillation test” in the  
 17 software that could “interfere with the SDM’s proper deployment of frontal airbags or  
 18 pretensioners as required.”<sup>26</sup>

19 68. This oscillation-test issue is distinct from the 45-millisecond cutoff described in  
 20 this case, but GM’s use of the same software with the identical defective oscillation test in more  
 21 than three and a half million vehicles is evidence that GM developed and applied the same SDM  
 22 software across a very large range of makes and model years.

23 69. The widespread use of this same oscillation test in the SDM software used for a  
 24 wide variety of makes and models, including both GM cars and trucks, also supports Plaintiffs’  
 25 allegations in this case that both GM trucks and GM cars used the same SDM software algorithm  
 26  
 27

28 <sup>26</sup> See General Motors LLC Part 573 Vehicle Safety Recall Report, 16-V-651 (September 2016) available at: <https://static.nhtsa.gov/odi/rci/2016/RCLRPT-16V651-2475.PDF>.



(which started as ALGO-S) to control the SDMs in the vehicles under their direction, but that GM trucks modified the algorithm as designed to include the SDM Calibration Defect.

70. Finally, the use of the same software calibration strategy across many different vehicles is further supported by Mr. Caruso's description of his work with Old GM in setting and implementing the software calibration strategy for vehicles at the group level, for the trucks group and cars group. See, e.g., Nossar Report, *supra*, at p. 5 (Mr. Caruso recounting the "GM Truck Groups' edict to set certain crash sensor calibration parameters outside the recommended minimum guidelines set by the crash sensing algorithm designers").

2. **The 45-millisecond cutoff was not necessary to protect against "late" airbag deployments.**

71. GM trucks group's insistence on the 45-millisecond window after which the airbags and seatbelts cannot deploy was unjustified and unsafe.

72. On information and belief, the trucks group chose to set this aggressive cutoff due to concerns about the potential for airbags to deploy "too late" during an accident. But as the trucks group also knew, these concerns were unwarranted given technology that mitigated the risks of "late" airbag deployments.

73. A brief history of airbags in motor vehicles puts this ~~reckless~~-dangerous decision in context. Before 1998, airbag systems were effectively one-size-fits-all. Designed to protect against only frontal crashes, these "first-generation" airbags were built to meet a standardized government test that required they protect an unbelted, midsize adult male dummy (175 pounds) in a 30-MPH crash into a rigid barrier.<sup>2427</sup> To do so, an airbag had to fill up quickly with gas, resulting in a deployment speed of up to 200 MPH.<sup>2528</sup>

74. Not all vehicle occupants fit this description, however, and the intensity of first-generation airbag deployment could prove dangerous for children and those who were positioned

<sup>2427</sup> Jack Keebler, *Airbags Safe Insane? – Special Report*, Motortrend (Sept. 1, 2000), <https://www.motortrend.com/news/airbags-safe-insane-special-report/> (last visited August 4, 2021, 2023).

<sup>2528</sup> *Id.*; see also David B. Ottaway & Warren Brown, *From Life Saver to Fatal Threat*, The Wash. Post (June 1, 1997), <https://www.washingtonpost.com/archive/politics/1997/06/01/from-life-saver-to-fatal-threat/56d05b9e-a1bc-49b7-beb4-43480762b25e/> (last visited August 4, 2021, 2023).

1 too close to the bag when it inflated (for example, because they had already been thrown forward  
2 toward the steering wheel during an under-way accident).<sup>2629</sup>

3 75. Public perception about airbag safety in motor vehicles, and in turn, the vehicle  
4 manufacturers that sold them, turned increasingly unfavorable following reports of late and  
5 aggressive deployments in first-generation airbags. Both regulators and vehicle manufacturers  
6 recognized the need to address these issues.<sup>2730</sup> Beginning in October 1995, NHTSA initiated a  
7 series of actions to minimize and eventually eliminate the adverse effects of late and aggressive  
8 airbag deployments while preserving their life-saving benefits.<sup>2831</sup>

9 76. In 1997, NHTSA issued modified federal rules to allow automakers to reduce the  
10 energy in frontal airbags. This led to “an industry-wide changeover” to “redesigned” airbags in  
11 the very next model years (1998-1999).<sup>2932</sup> The “redesign” consisted of several new ~~technology~~  
12 technological innovations. The first and immediate solution was “depowered” airbags:  
13 automobile manufacturers removed some of the gas-generating propellant or stored gas from the  
14 inflators to reduce the pressure and velocity of deployments. This change alone was highly  
15 effective in reducing low-to-moderate speed fatalities.<sup>3033</sup>

16 77. Other innovations to reduce the risk of aggressive deployments included reducing  
17 the volume or rearward extent of airbags, positioning them further from occupants, revised  
18 folding techniques, and tethering and shifting from pyrotechnic inflators to hybrids including  
19 stored gas.<sup>3134</sup>

23 <sup>2629</sup> Susan A. Ferguson & Lawrence W. Schneider, *An Overview of Frontal Airbag Performance*  
24 *with Changes in Frontal Crash-Test Requirements: Findings of the Blue Ribbon Panel for the*  
25 *Evaluation of Advanced Technology Airbags*, Traffic Injury Prevention 3 (Nov. 2008).

26 <sup>2730</sup> U.S. Department of Transportation, NHTSA, *An Evaluation of the 1998–1999 Redesign of*  
27 *Frontal Air Bags*, NHTSA Technical Report No. DOT HS 810 685, p.11, (August 2006)  
28 [hereinafter “NHTSA Redesign Report”]; see also Ferguson & Schneider, *supra* note 2629.

<sup>2831</sup> NHTSA Redesign Report, *supra* note 2730, at vii.

<sup>2932</sup> *Id.*; see also Micah Wright, *The Hidden Dangers of Older Airbags*, MotorBiscuit (May 8,  
2015), <https://www.motorbiscuit.com/the-hidden-dangers-of-older-airbags> (last visited ~~August~~  
4 January 26, 2021 2023).

<sup>3033</sup> See NHTSA Redesign Report, *supra* note 2730 at 25.

<sup>3134</sup> *Id.* at vii.

1           78. Old GM knew about and employed these new technologies in its vehicles. Indeed,  
2 as the director of Old GM's Safety Center Terry Connolly said in 2000, there were no significant  
3 downsides to using this new "depowered" airbag technology, even for unbelted passengers.<sup>35</sup>

4           79. Further innovations referred to as "advanced" or "smart" airbags followed soon  
5 thereafter.<sup>3336</sup> "Advanced" airbags alter deployment patterns according to feedback from several  
6 sensors. These sensors tailor how the airbag deploys based on the severity of the crash, the size  
7 and posture of the vehicle occupant, whether the occupant is wearing a seatbelt, and how close  
8 the occupant is to the airbag.<sup>37</sup>

9           80. Many "advanced" systems use dual-stage or multi-stage inflators. This means that  
10 they have two inflation stages that can be ignited sequentially or simultaneously depending on  
11 crash severity.

12           81. "Advanced" airbags phased into production beginning September 1, 2003 and  
13 were required in all new vehicles by September 1, 2006.<sup>3538</sup>

14           82. Thus, based on the depowered and advanced airbag technology starting in 1998  
15 and 1999, the risks posed by "late" deployments in early generation airbags had greatly  
16 diminished. Indeed, while NHTSA estimates that more than 290 deaths were caused by frontal  
17 airbag inflation between 1990 and 2008, nearly 90 percent of those deaths occurred in vehicles  
18 manufactured before 1998 (i.e., with first-generation airbag technology).<sup>3639</sup> Today, with this  
19 new technology, serious injuries from properly functioning airbags are rare.<sup>3740</sup>

20           83. Despite knowledge and use of the new technology mitigating the risks of late  
21 deployments, the trucks group still insisted on shutting off the airbags and seatbelts in the Class  
22 Vehicles after 45 milliseconds. On information and belief, despite these well-established  
23  
24

25 <sup>35</sup> Keebler, *supra* note ~~24~~<sup>27</sup>.

26 <sup>3336</sup> See NHTSA Redesign Report, *supra* note ~~27~~<sup>30</sup> at p. 3.

27 <sup>37</sup> Wright, *supra* note ~~29~~<sup>32</sup>.

28 <sup>3538</sup> NHTSA Redesign Report, *supra* note ~~27~~<sup>30</sup>, at vii.

<sup>3639</sup> Insurance Institute for Highway Safety. "Airbags" (2021), available at:  
<https://www.iihs.org/topics/airbags> (last visited ~~August 4~~<sup>January 26, 2021</sup> ~~2021~~<sup>2023</sup>).

<sup>3740</sup> *Id.*

advancements in airbag technology outlined above, GM continued to use this same defective software ~~algorithm~~ calibration strategy in its vehicles in 2009 and beyond.<sup>38</sup>

**3. GM knew about a pattern of suspicious accidents involving the SDM Calibration Defect in the Class Vehicles.**

84. ~~14.~~ This GM's reckless decision and continued disregard for clear warnings about the risks in shutting off the SDM too soon during an accident has had real and tragic consequences.

**3. GM knew about a pattern of suspicious accidents involving the SDM Calibration Defect but has done nothing to correct it.**

85. ~~1.~~ As outlined above, GM has known about the SDM Calibration Defect since it took over Old GM's books, records, and personnel in 2009. GM has continued to accrue knowledge of the defect, and its serious consequences, in the years since. Indeed, GM has known about, investigated, and even litigated numerous crashes in which airbags suspiciously failed to deploy in multi-impact or prolonged-onset frontal crashes in the Class Vehicles—a clear indication of the SDM Calibration Defect.

86. ~~2.~~ Despite obvious signs of a known and dangerous risk, GM concealed these accidents and the SDM Calibration Defect from consumers and regulators to avoid or at least delay a recall and the attendant costs and reputational damage therefrom. To date, GM has taken no corrective action to repair or recall the Class Vehicles to address this defect.

**a. GM has litigated (and settled) many personal injury lawsuits for suspicious airbag failures in the Class Vehicles.**

87. In addition to its institutional records and knowledge, GM was on notice of the SDM Calibration Defect through litigating and settling personal injury lawsuits involving airbag and ~~seatbelts~~ seatbelt failures consistent with the SDM Calibration Defect.

88. As noted above, Chris Caruso has served as an expert witness in many of these lawsuits. Mr. Caruso has “over 43 years working in the automotive engineering field.” Exhibit D at 4. This includes work as an engineer for Old GM from 1979 to 1986. Thereafter, from 1986 to

<sup>38</sup> ~~Publicly available crash data reports from NHTSA indicate that the Delco SDM was used in GM trucks vehicles up through at least MY 2015.~~

2006, Mr. Caruso worked for Delco Electronics, where he was “involved in the development and implementation of the second generation of airbag system on GM vehicles and their subsidiaries in the US.” *Id.* at 1. Mr. Caruso also worked as a “lead engineer in the development of crash sensor specifications and the airbag sensing systems for major OEM’s worldwide,” including Old GM, and himself “designed the SDM crash sensing algorithms.” *Id.* at 1-2. Mr. Caruso worked for Delco through August of 2006. Thereafter, he began work in his current role as a consultant with Automotive Safety Consulting, where he has “served as a consultant for both plaintiffs and defendants in numerous cases involving automotive safety systems, including cases involving EDR/CDR downloads and readouts.” *Id.* at 4.

89. Mr. Caruso recounts much of this work experience and the history of the SDM Calibration Defect in public documents in a case filed in 2011, just two years after GM was formed.

90. ~~2. In one case filed in 2011—just two years after GM was formed—Plaintiffs In~~ that case, Plaintiff James Nossar sued GM LLC following a crash in his 2005 Chevrolet Trailblazer (a Class Vehicle here). As detailed in that complaint, on or about February 25, 2010, Mr. Nossar drove his Trailblazer into the back of a 1999 Suburban “and sustained a moderate to severe frontal impact . . . at a rate of speed that exceeded the airbag system’s predetermined deployment threshold.” *See Nossar v. General Motors LLC*, Dkt. 4, Case No. 1:11-cv-02129 (N.D. Ga.). Despite this “significant frontal collision,” the airbag failed to deploy and seatbelt pretensioners failed to trigger. Without the airbag or seatbelt to protect him, Mr. Nossar’s head slammed into the steering wheel, which caused “fracturing practically every bone in his face and brain injuries.” *Id.*

91. ~~3. In support of his claims, in April 2012, Mr. Nossar filed an expert report from Chris Caruso. Mr. Caruso~~ who, as explained above, is an expert in automotive crash sensing systems ~~and who~~ worked for Delco engineering during the development of the defective SDM software calibration in the Class Vehicles. *See id.* at Dkt. ~~40-240-1~~.

92. ~~4. In that report, Caruso detailed the same flaws in the SDM software calibration described herein. He explained that the airbag sensing system in the Trailblazer was “defective by~~

1 design and has the potential to not deploy frontal impact airbags in high speed frontal impacts  
 2 where conditions vary slightly from the perfect laboratory conditions where the system was  
 3 designed and tested.” Based on Caruso’s experience working in the development of the SDM  
 4 software, he related that there were concerns, due to the calibration, “that in longer duration, but  
 5 high severity events and in concatenated events (such as a curb impact followed by a utility pole  
 6 impact), the airbags would fail to deploy because the algorithm deployment thresholds were no  
 7 longer active.” *Id.*

8 93. ~~5.~~ Caruso further explained that as that litigation proceeded into discovery, he  
 9 would “expect to identify emails and other correspondence between GM Truck Engineers and  
 10 Delphi Crash Sensor engineers discussing the concerns over GM Truck Groups’ edict to set  
 11 certain crash sensor calibration parameters outside the recommended minimum guidelines set by  
 12 the crash sensing algorithm designers [~~i.e.~~ the Delphi/Delco engineers].” Caruso expected to  
 13 obtain this corroborating evidence because he “ha[d] seen these documents before and kn[e]w the  
 14 content,” and summarized that “the calibration values result in premature turning off of algorithm  
 15 thresholds which effectively disables the front airbags after 45 to 50ms.” *Id.* (emphasis added).

16 94. Mr. Caruso’s expectations as to what discovery would reveal are plausible because  
 17 of his contemporaneous experience with Delco and Old GM in the time period in which Mr.  
 18 Nossar’s vehicle was developed. Mr. Caruso left Delco in 2006, long after the development  
 19 concluded for Mr. Nossar’s model year 2005 vehicle. (Because vehicles are actually sold in their  
 20 model year, i.e., 2008 vehicles are sold in 2008, their development predates the actual model year  
 21 by, one, two, or more years).

22 95. As to Mr. Nossar’s 2005 Trailblazer specifically, Caruso observed that the vehicle  
 23 included a version of the SDM hardware known as the SDM-DS, and concluded:

- 24 • ~~6.As to Mr. Nossar’s crash specifically, Caruso concluded that the~~ The airbags and  
 25 seatbelts failed because, at the time the airbags should have deployed, and  
 26 consistent with the SDM Calibration Defect here, **“the SDM calibration had  
 already timed out after ~~45 ms~~ 45-50ms after the crash started.”**
- 27 • “In reviewing the crash performance of the sensing system for the subject vehicle,  
 28 with respect to the conditions of the subject crash, it is clear that the calibration

values result in premature turning off of algorithm thresholds which effectively disables the front airbags after 45 to 50ms.”

96. ~~Caruso’s conclusion there was that “[t]he~~ “The failure by GM to understand the risks of certain dictated calibration values [in the SDM software calibration] led directly to the design defect that rendered the frontal impact airbag system in the 2005 Chevrolet Trailblazer defective and unreasonably dangerous in certain field relevant, real-world crashes.” *Id.*

97. ~~7.~~ GM LLC, a named defendant in ~~that~~ the *Nossar* case, clearly knew about and received Mr. Caruso’s report outlining the history of these issues in the SDM software calibration.

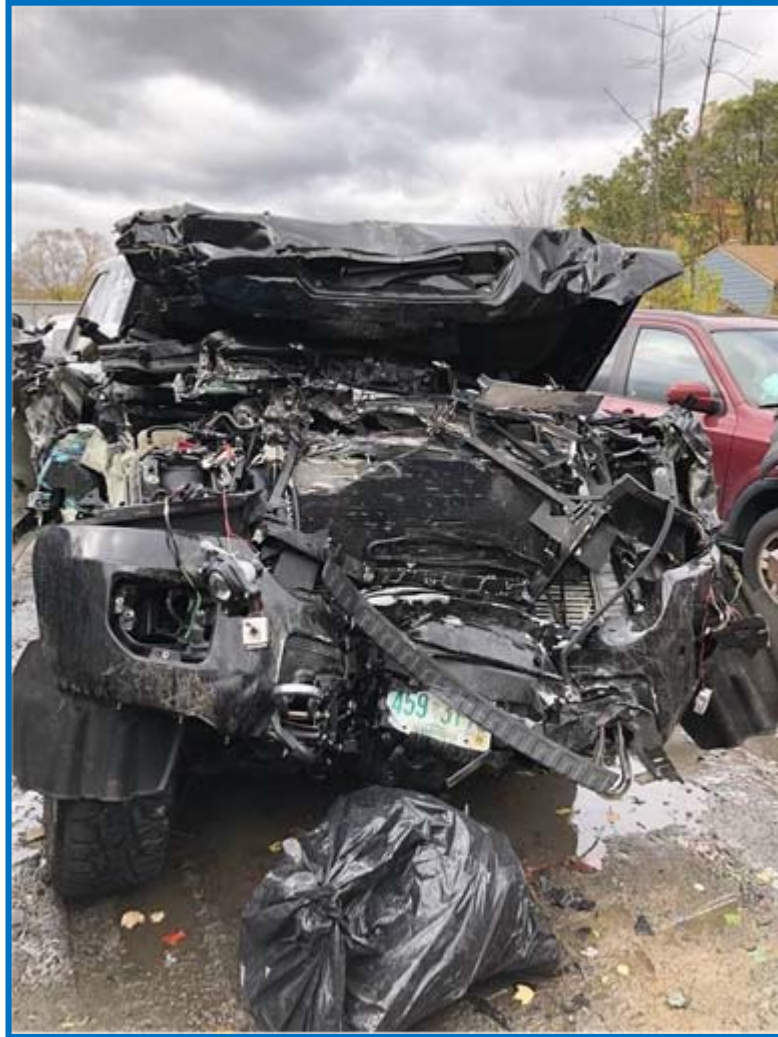
98. The *Nossar* case and Mr. Caruso’s report support that Old GM continued to install SDMs with the Calibration Defect in its vehicles at least through model year 2005.

99. More recently, Mark McCoy filed a lawsuit against GM LLC in 2020 after a serious accident in his 2018 Sierra Denali 2500. See *McCoy v. General Motors LLC*, Case No. X03- HHD-CV-20-6142910-S (Conn. Sup. Ct).

100. While on a freeway exit ramp, at a sharp turn, Mr. McCoy veered off the road, crashed into a fence, and then crashed into a trailer, before finally crashing into a construction vehicle parked near the ramp. None of the airbags in his vehicle deployed. As a result, Mr. McCoy sustained “catastrophic, painful and severely debilitating injuries,” including traumatic spinal injuries, total paralysis from the chest down, a traumatic brain injury, and a broken nose, among other injuries.<sup>41</sup> Below is a picture of Mr. McCoy’s Denali after the crash:

<sup>41</sup> See June 19, 2020 Amended Complaint, ¶ 8, *McCoy v. General Motors LLC*, Case No. X03- HHD-CV-20-6142910-S (Conn. Sup. Ct) (“McCoy”). Available at: <https://civillinquiry.jud.ct.gov/DocumentInquiry/DocumentInquiry.aspx?DocumentNo=19161992>





101. Mr. Caruso also served as an expert for plaintiff in the *McCoy* case and submitted a detailed report in connection with summary judgment briefing in that matter.<sup>42</sup> Therein, Mr. Caruso described his history with the company, including warning Old GM against using the defective software calibration in trucks and SUVs, and his insistence on a disclaimer of liability before releasing the calibrations for use in the Class Vehicles.

102. Further, Mr. Caruso described his work after he left Delco in 2006 in failure-to-deploy lawsuits “where the root cause was determined to be the 45ms SHUTOFF criteria” [i.e.,

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<sup>42</sup> Mr. Caruso’s opinions in the *McCoy* case became publicly available only after the April 2022 hearing on the Defendants’ motion to dismiss in this matter, and were also not available at the time Plaintiffs filed their amended complaint in October 2021.



1 the SDM Calibration Defect] in “numerous” GM trucks and SUVs in “earlier model[s]” than  
 2 model year 2018.<sup>43</sup>

3 103. Through discovery in the *McCoy* matter, Mr. Caruso analyzed the actual software  
 4 calibration file for the SDM software in Mr. McCoy’s model year 2018 vehicle. Based on his  
 5 review of the file, Mr. Caruso concluded that the algorithm in the 2018 vehicle remained a “carry  
 6 over” from the SDM software algorithm, ALGO-S, he himself designed years prior. Exhibit D at  
 7 16. Moreover, Caruso concluded that in the 2018 Sierra, GM “appeared to be using **very similar**  
 8 **shutoff times in this calibration**” to those he had previously objected to in earlier model years in  
 9 which GM “forc[ed] the use of 45ms shutoff times.” *Id.* at 18.

10 104. The presence of the defective calibration strategy in a GM truck sold at least 12  
 11 years after he stopped working for Delco came as some surprise to Caruso. Indeed, he “had  
 12 believed” GM would have discontinued the use of the dangerous calibration prior to model year  
 13 2018. But the software itself told a different story. In summary, based on the actual software,  
 14 discovery produced in that case, as well as the crash conditions from the McCoy accident, Caruso  
 15 opined:

- 16 • “The failure to deploy [the] airbags resulted in a condition that was defective, unsafe  
 17 and unreasonably dangerous” to the driver in this vehicle;
- 18 • “[I]t appears that [GM trucks Group] is **still employing very aggressive stop times**”  
 19 in its software calibrations as of model year 2018; and
- 20 • GM should have implemented an “alternative design” to “[m]odify the algorithm  
 21 calibrations with more robust 120-150ms” cutoff thresholds.

22 See Exhibit D.

23 105. Caruso’s report in the *McCoy* case—notably based on his review of the actual  
 24 software calibration—demonstrates that at least through model year 2018, GM continued to  
 25 install Delco SDMs governed by dangerous cutoff thresholds in calibrations based on the original  
 26 ALGO-S software algorithm.

27 106. Mr. Caruso also was able to identify the SDM hardware used in the McCoy  
 28 vehicle as the Delco SDM30, which is evidence that GM continued to use the defective software

<sup>43</sup> Mr. Caruso’s report in the McCoy matter is attached hereto as Exhibit D. See *id.* at 19.

calibration for all vehicles that contain that Delco SDM model. Publicly available crash data reports from NHTSA show the same Delco SDM30 was installed by GM in GM trucks in at least model years 2015 and 2016, including in the model year 2015 Chevrolet Trax, 2015 Chevrolet Tahoe, and 2016 Yukon Denali.

107. Likewise, on information and belief, Plaintiffs Vargas, Ray, and Milstead’s Class Vehicles contain SDM-11 model Delco SDMs. Given their model years and the Delco SDM, the plausible, and most reasonable, inference is that they also included the associated defective calibration strategy GM used with Delco SDMs.

108. Based on: (1) Mr. Caruso’s early knowledge of the SDM Calibration Defect when it was first used; (2) his subsequent tenure with Delco through 2006, during which model year vehicles for subsequent years were already in development; (3) his expert opinion on the presence of the SDM Calibration Defect in a model year 2005 vehicle (*Nossar*) after his assessment of the vehicle performance and crash dynamics; and (4) his opinion about defect’s persistence in a model year 2018 vehicle with the Delco SDM30 (*McCoy*)—the plausible, and most reasonable, inference is that the defect persisted in the years between 1999, 2005 and 2018.

109. Following service of Mr. Caruso’s expert report and deposition in the *McCoy* case, GM agreed to settle the case in December 2022.<sup>44</sup>

110. ~~8. Another Plaintiff~~ In addition, Chad Vaith~~7~~, filed a lawsuit against GM LLC in 2017 after an accident in his MY 2014 Silverado. As that complaint relates, in December 2015, Mr. Vaith was involved in an accident in which he drove his Silverado “off the road into a ditch,” after which he “continued through the ditch for approximately forty yards before launching over the driveway/culvert. . . before coming to a final rest approximately twenty yards south.” See *Vaith v. General Motors LLC*, Dkt. 1, Case No. 18-cv-00031 (D. Minn.). Despite multiple impacts in that prolonged accident, the airbags and seatbelts did not deploy, causing Mr. Vaith to “suffer severe personal injuries.” Mr. Caruso was ~~also~~ a disclosed expert for plaintiff in that case,

<sup>44</sup> Plaintiffs’ allegation of a settlement is supported by plaintiff’s request in *McCoy* in October 2022 for additional time to withdraw the case because “additional time is necessary to exchange the necessary settlement documents.” See *McCoy*, October 19, 2022 CaseFlow Request. Plaintiff then withdrew the matter last month, in December 2022. See December 19, 2022 Withdrawal of Action, *McCoy v. General Motors LLC*, Case No. X03- HHD-CV-20-6142910-S (Conn. Sup. Ct).

1 although ~~a report from Caruso was~~ his opinions about the 2014 Silverado were not publicly filed.  
 2 *See, e.g., id.* at Dkt. 64.

3 111. ~~9.~~ Mr. Vaith's case proceeded into fact discovery and ultimately resulted in a  
 4 "negotiated settlement" between Mr. Vaith and GM. *Id.* at Dkt. 82.

5 112. ~~10. Apart from~~ In addition to these previous lawsuits against GM with Mr. Caruso  
 6 as an expert, another automotive crash expert, Sal Fariello, wrote directly to GM's CEO Mary  
 7 Barra twice in December 2016 to raise similar concerns about issues he had observed in the  
 8 airbag sensing system in model year 2006 GM SUVs. Mr. Fariello's letters are available in  
 9 NHTSA's public records.<sup>3945</sup>

10 113. ~~11.~~ Mr. Fariello's letters to GM's CEO focused on an accident in a 2006  
 11 Trailblazer (a Class Vehicle here) for which he served as a litigation consultant in a lawsuit filed  
 12 in or around 2014. Therein, he lists multiple technical issues with the airbag sensing system that  
 13 he wanted to bring to GM's attention and urge them to address. For example, he cautions that, in  
 14 his view:

15 a. "The deployment thresholds [i.e., the inputs that will trigger deployment]  
 16 for the airbag were set too high and compromised driver and passenger safety as a result of GM's  
 17 improper effort to mitigate lawsuits related to relatively low speed deployments of the airbag.";

18 b. "The deployment threshold did not meet GM's and generally accepted  
 19 standards for when an airbag should deploy in order to prevent occupant death based on written  
 20 technical papers and educational videos produced by GM or its employees."; and

21 c. "Failure of the SDM to independently process a crash pulse and deploy the  
 22 airbag implicates a defective software algorithm; specifically 'Algo S-H' [the software algorithm  
 23 in the Class Vehicles]."

24 114. ~~12.~~ At the time, in 2016, Mr. Fariello ~~noted~~ proposed that the SDM could be re-  
 25 programed "with a more responsive algorithm" to resolve these issues, and that GM's "only  
 26 apparent motive for not doing this related to the cost of implementing a recall."

27 <sup>3945</sup> Mr. Fariello is a forensic crash investigator. *See* Bill Saporito, "Air Bag Blow Out," *Time*  
 28 *Magazine*, (December 4, 2014). Available at: <https://time.com/3617681/the-air-bag-blowout> (last  
 visited ~~August 4, 2021~~ January 26, 2023).

1 115. ~~13.~~ Frustrated by the response he received from GM’s counsel in response to these  
 2 letters, Mr. Fariello then wrote to Senator Bill Nelson of Florida enclosing his correspondence to  
 3 GM and escalating his concerns. Senator Nelson then forwarded that correspondence to  
 4 NHTSA.<sup>4046</sup>

5 116. ~~14.~~ As Mr. Fariello concluded, in his view, GM was stalling on this issue “just as  
 6 they did with the Takata airbag matter.”

7 117. Finally, in April 2016, plaintiff Kayla Greenwood filed suit against GM on behalf  
 8 of her deceased parent, Galen Greenwood. See Greenwood v. General Motors LLC and General  
 9 Motors Company, Dkt. 1, Case No. 16-cv-00149 (M.D. GA). Galen Greenwood was fatally  
 10 injured when his “airbag failed to deploy and his seat belt failed to properly restrain him” during a  
 11 multi-impact crash in his 2006 GM SUV, a Chevrolet Equinox—hallmarks of the SDM  
 12 Calibration Defect. Id. Specifically, “Mr. Greenwood lost control of the subject vehicle, traveled  
 13 over the northbound lane and onto the west shoulder in a gradual manner, and impacted two trees  
 14 with the front of the subject vehicle. During the incident sequence, the driver’s side airbag failed  
 15 to deploy and the seat belt failed to properly restrain Plaintiff’s decedent. During the impact,  
 16 Galen Greenwood suffered severe injuries which resulted in his death.” Id. GM settled with Ms.  
 17 Greenwood in May 2017. See id. Dkt. 20-1.<sup>47</sup>

18 118. Taken together, these and other allegations support the existence of the SDM  
 19 Calibration Defect and the reasonable inference that Plaintiffs’ model years 2010 and 2012 GM  
 20 trucks and SUVs included it. Specifically, given that: (1) the model years of Plaintiffs’ Class  
 21 Vehicles were developed after Old GM first used the defective Software Calibration in or about  
 22 1999, and not long after Mr. Caruso left his role with Delco in 2006 (during which subsequent  
 23 model years were already in development); (2) Plaintiffs’ Class Vehicles predate the 2018 vehicle

24 <sup>4046</sup> Mr. Fariello’s letters to GM and further documentation are available at:  
 25 <https://static.nhtsa.gov/odi/cmpl/2017/CL-10955948-3381.pdf> (last visited ~~August 4~~ January 26,  
 26 ~~2021~~ 2023).

27 <sup>47</sup> In the McCoy matter, GM’s designated corporate witness testified that he had previously  
 28 offered testimony in a personal injury lawsuit about a crash where a vehicle “went off the  
roadway and struck a tree,” where the plaintiff’s name was Greenwood. On information and  
belief, GM’s corporate designee in the McCoy matter was thus also a deponent in this settled  
Greenwood lawsuit, demonstrating further corporate knowledge of persistent injuries from the  
SDM Calibration Defect in the field.

in which Mr. Caruso reviewed the software calibration, and concluded that the algorithm still included “very similar shutoff times” to those he had originally raised concerns about twenty years earlier; (3) corroborating instances between those two bookends (1999 and 2018) support the persistence of the defective calibration in the intervening model years (i.e., *Nossar, Vaith, Greenwood*, and Fariello’s letters, discussed *supra*); and (4) the broad, cross-model way that SDM software calibration strategy is set and implemented across GM’s fleet within a given model year, the plausible, and most reasonable inference is that GM installed the same defective calibration in all its trucks and SUVs at least through model year 2018.

**b. GM knew or should have known about hundreds of publicly reported airbag failures in the Class Vehicles.**

119. GM was also on notice of the SDM Calibration Defect and its attendant safety risks from consumer complaints. These complaints are publicly available online through NHTSA’s website. Between 1999 and the present, hundreds of consumers reported to NHTSA that airbags and/or seatbelts had suspiciously failed during frontal crashes involving concatenated (multiple) impacts or potentially prolonged crash onsets. New allegations—including Mr. Caruso’s report showing the defect continued in a model year 2018 vehicle—make the below crashes even more suspicious as relevant incidents with the hallmarks of the SDM Calibration Defect (airbag and seatbelt failures in concatenated and prolonged frontal impacts) in the very vehicles alleged to be impacted by that Defect (GM trucks and SUVs).

120. On information and belief, vehicle manufacturers such as GM monitor these public databases for complaints about their vehicles, considering their statutory obligations to report known safety defects in their vehicles to NHTSA and to consumers. Moreover, in many of these reports, it is expressly clear that GM was directly informed of, and even investigated, the accident in question. While GM has access to the full body of these complaints from 1999 and onward in the public database, it bears mention that over three hundred of them were filed after the new GM entities were created in 2009.<sup>4448</sup>

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<sup>4448</sup> Many publicly reported accidents occurred prior to 2009, which information would likewise have been available to Old GM. GM would have acquired Old GM’s knowledge of these accidents, reflected in its books, records, and personnel, when it was formed in 2009.

121. One such complaint details an accident in a 2004 Chevrolet Trailblazer in August 2014. The driver states that they were traveling 50 MPH on a four-lane highway where another vehicle, waiting to U-turn, “decided to turn right into me—oncoming traffic.” The vehicles crashed, which then “sent [the driver] into a head on collision with the guard rail.” The driver questions that “there were 2 incidents in that sequence of events that the airbags should have deployed, but did not! This accident caused several injuries to myself and my passenger. We definitely could have been killed and no airbags to help save our lives...” Photos of the damage to the vehicle from that accident follow. (NHTSA Complaint #1100694).







122. Another report describes a September 2012 accident in a 2005 Chevrolet Trailblazer. It states that the driver, at 30 MPH, swerved to avoid a deer in the road, which caused the vehicle to lose control, exit the road, and ultimately “crash[] off a 9 foot embankment.” From there, the vehicle continued to crash through a field, into a dirt levy, and finally into a drainage ditch. None of the airbags deployed. The driver “became unconscious after his head crashed into the steering wheel” and “suffered severe neck injuries.” The dealer later inspected the vehicle but responded that the results were “inconclusive” and that the manufacturer “was notified but offered no assistance.” Photos of the damage to the vehicle from that accident follow. (NHTSA Complaint #942950).<sup>49</sup>

<sup>49</sup> Accident documentation and photos are available at: <https://static.nhtsa.gov/odi/cmpl/2012/EQ-10477257-8767.pdf> (last visited January 26, 2023).







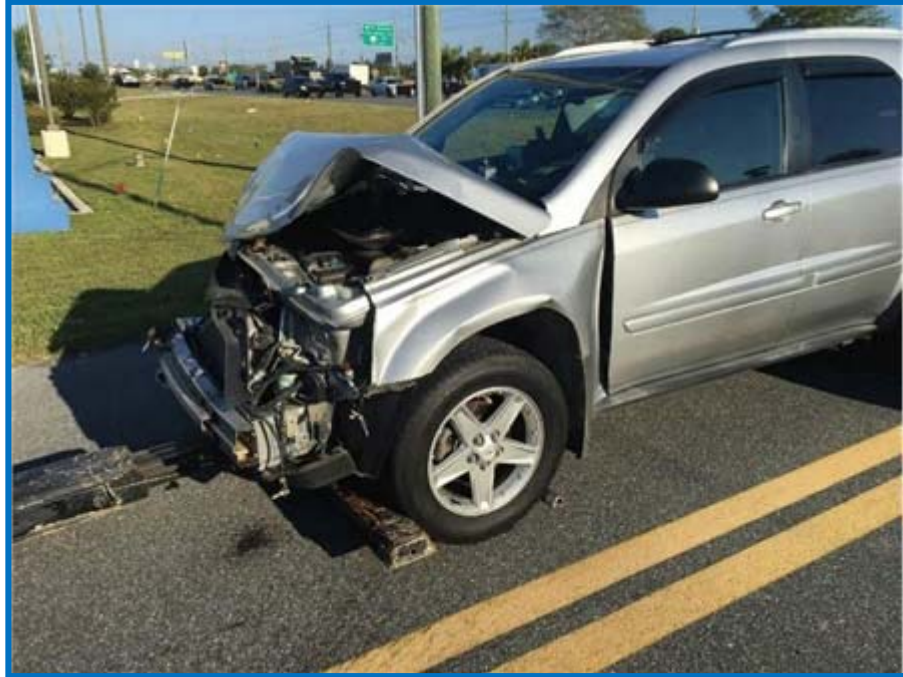
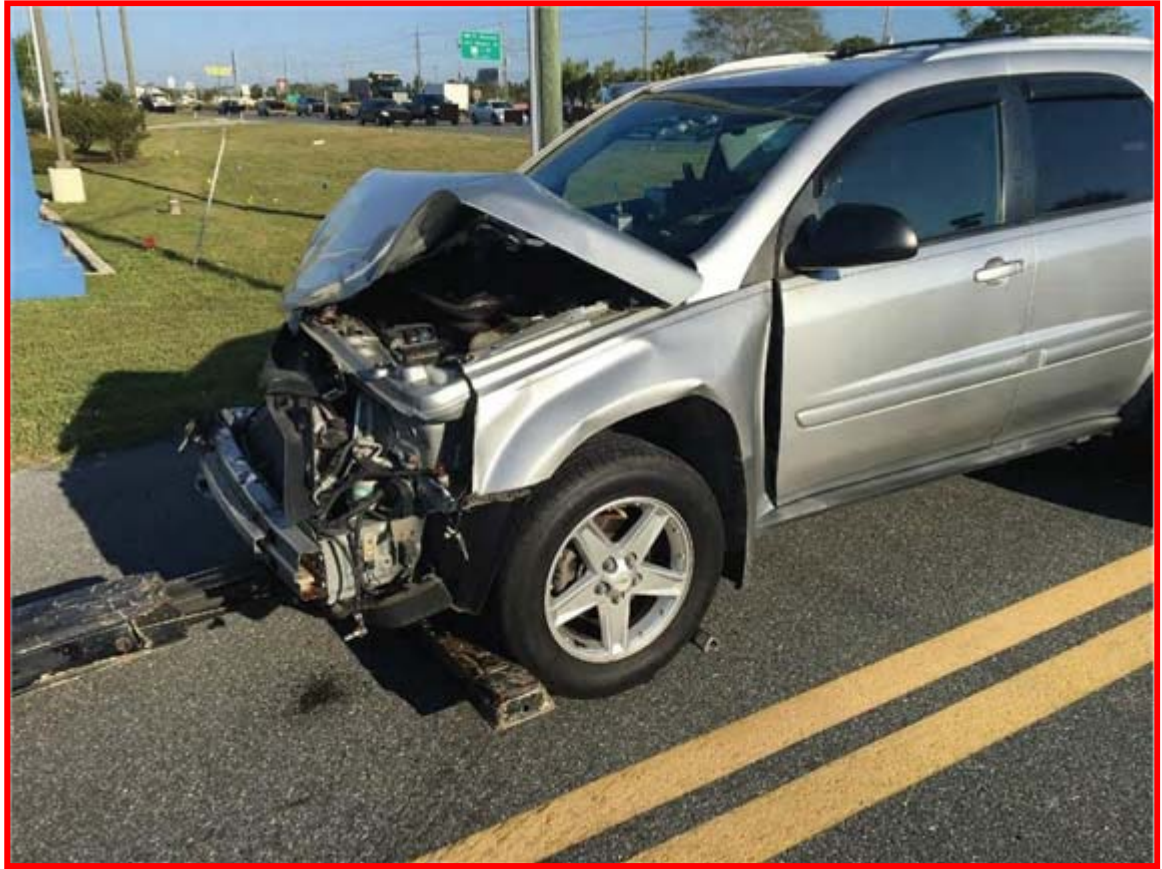
123. In another example, the complaint describes a serious accident in March 2019 involving a 2005 Chevrolet Equinox. The vehicle crashed into the front of another vehicle at 35

1 MPH. The airbags did not deploy. The driver sustained injuries to the head and ankle and  
2 required medical attention. Photos of the damage to the vehicle from that accident follow.





124. (NHTSA Complaint #1550406).<sup>4350</sup>



<sup>4350</sup> Photos and accident information are available at: <https://static.nhtsa.gov/odi/cmpl/2019/EQ-11191960-7090.pdf> (last visited ~~August 4~~ January 26, 2021 ~~2023~~).

~~2312766.6~~ 2730953.6

125. Another account of a July 2007 accident in a model year 2001 Isuzu Rodeo describes a crash at 65 MPH so severe that “the median on the highway sustained property damage” and “the vehicle was destroyed,” but the airbags did not deploy. This is how the vehicle looked after that accident:



126. Additional examples of similarly suspicious frontal accidents—i.e., frontal accidents with multiple discrete impacts, or potentially prolonged onset frontal crashes involving “soft” impacts—in which the airbags and/or seatbelts failed include:

a. NHTSA complaint #753287 dated Tuesday, October 16, 2001, reported an accident on Monday, October 8, 2001 involving a 1999 CHEVROLET SUBURBAN in Andover, KS. The complaint states: “60 MPH CROSS WIND BLEW THE SUBURBAN HEAD ON INTO THE CONCRETE MEDIAN. THE VEHICLE SPUN 360 DEGREES, WENT INTO THE DITCH, THE FRONT END HIT AGAIN THE VEHICLE WENT UP THE OTHER SIDE OF THE EMBANKMENT AND STOPPED IN A FIELD. ENTIRE FRONT END OF THE FRAME NOT REPAIRABLE . . . FRONT CROSSMEMBER BENT AND ENGINE MOVED UPWARDS AT A 10 DEGREE ANGLE. **AIR BAGS FAILED TO DEPLOY.** \*AK”<sup>4451</sup>

b. NHTSA complaint #859858 dated Friday, April 7, 2000, reported an accident on Saturday, April 3, 1999 involving a 1999 CHEVROLET SILVERADO. The

<sup>4451</sup> Emphasis is supplied here and in the paragraphs that follow.

1 complaint states: “WHILE TRAVELING ON A WET ROAD AT HIGHWAY SPEED OF 60  
2 MPH VEHICLE HYDROPLANED, SPUN INTO A DITCH, AND COLLIDED INTO A TREE  
3 WITH BOTH SIDES AND FRONT OF VEHICLE. **UPON IMPACT, AIR BAGS FAILED TO**  
4 **DEPLOY.** MFR. NOTIFIED. \*AK”

5 c. NHTSA complaint #877320 dated Wednesday, January 3, 2001, reported  
6 an accident on Friday, December 1, 2000 involving a 1999 CHEVROLET SUBURBAN in  
7 Amarillo, TX. The complaint states: “CONSUMER WAS TRAVELING ABOUT 40MPH ON  
8 HIGHWAY AND ANOTHER VEHICLE VEERED INTO HER LANE, HITTING HER HEAD-  
9 ON, AND PUSHING VEHICLE INTO ANOTHER LANE. **VEHICLE HIT TELEPHONE**  
10 **POLE, AND DUAL AIRBAGS DIDN'T DEPLOY.** CONSUMER WAS INJURED.  
11 CHEVROLET HAS BEEN NOTIFIED. \*AK”

12 d. NHTSA complaint #10060150 dated Tuesday, March 2, 2004, reported an  
13 accident on Tuesday, February 24, 2004 involving a 2001 CHEVROLET BLAZER in Austin,  
14 TX. The complaint states: “**DRIVER SIDE AIR BAG FAILED TO DEPLOY IN A CRASH**  
15 **THROUGH: 1. A SIX FOOT TALL WOODEN FENCE AT ALMOST 30MPH, THEN 2. THE**  
16 **EXTERIOR SIDE OF A 2-STORY HOME THAT CONTAINED THE KITCHEN SINK AND**  
17 **PLUMBING FIXTURES, WHILE SMASHING UP AND OVER THE FIFTEEN-INCH**  
18 **CONCRETE FOUNDATION, FRONT-END FIRST.\*AK”**

19 e. NHTSA complaint #10082050 dated Thursday, July 15, 2004, reported an  
20 accident on Wednesday, July 14, 2004 involving a 2003 CHEVROLET SUBURBAN in Fresno,  
21 CA. The complaint states: “THE CONSUMER WAS INVOLVED IN AN ACCIDENT WHERE  
22 IT WAS HIT FROM THE FRONT DRIVER SIDE, THE IMPACT CAUSED THE VEHICLE  
23 TO HIT A TELEPHONE POLE HEAD ON. **THE AIR BAGS DID NOT DEPLOY.** \*JB”

24 f. NHTSA complaint #10103512 dated Friday, December 10, 2004, reported  
25 an accident on Sunday, December 5, 2004 involving a 2001 CHEVROLET SILVERADO in  
26 Rialto, CA. The complaint states: “CONSUMER’S VEHICLE WAS REAR ENDED WHILE  
27 DRIVING 50 MPH. THE VEHICLE WAS FORCE[D] INTO A SPIN AND THEN, IT HIT A  
28 CONCRETE ROAD DIVIDER. UPON IMPACT, **NEITHER FRONTAL AIR BAGS**



1 **DEPLOYED.** DRIVER SUSTAINED INJURIES, AND HAD TO BE TRANSPORTED TO A  
 2 LOCAL HOSPITAL. DEALER AND MANUFACTURER WERE NOTIFIED. THE  
 3 CONSUMER STATED THAT THE SEAT BELT DID NOT KEEP HER FROM HITTING HER  
 4 CHEST ON THE STEERING WHEEL.”

5 g. NHTSA complaint #10108404 dated Tuesday, February 1, 2005, reported  
 6 an accident on Tuesday, January 11, 2005 involving a 2000 CHEVROLET SILVERADO in  
 7 Toney, AL. The complaint states: “A CAR PULLED OUT IN FRONT OF ME WHICH STILL  
 8 HIT THE DRIVER'S SIDE OF MY VEHICLE (2000 CHEVY SILVERADO). **THEN MY**  
 9 **TRUCK HAD A FULL FRONTAL IMPACT AT GREATER THAN 30 MPH INTO A**  
 10 **DIRT WALL IN WHICH NEITHER THE DRIVER'S NOR PASSENGER'S AIRBAGS**  
 11 **DEPLOYED (THE TRUCK IS TOTALLED).** I HIT THE STEERING WHEEL AND GOT A  
 12 CONCUSSION WITH BLOOD AROUND THE BRAIN, A BROKE CHEEK BONE, AND  
 13 FRACTURED HIP. MY WIFE WAS 33 WEEKS PREGNANT AT THE TIME AND HER  
 14 WATER BROKE AND SHE GOT A COMPOUND FRACTURE IN THE LOWER  
 15 LEG/ANKLE. AS A RESULT OF THE WATER BREAKING MY SON WAS BORN 3 DAYS  
 16 LATER 7 WEEKS PREMATURE. AS FOR WHAT WAS DONE TO CORRECT THE  
 17 PROBLEM I'M HOPING IT WILL AT LEAST BE INVESTIGATED TO MAKE SURE THIS  
 18 IS NOT A SYSTEMIC PROBLEM (I.E. - SOFTWARE SCREWUP SOMETHING NOT  
 19 HOOKED UP RIGHT IN THE AIRBAG SYSTEM ETC).”

20 h. NHTSA complaint #10115806 dated Thursday, March 24, 2005, reported  
 21 an accident on Thursday, March 24, 2005 involving a 2002 CHEVROLET SILVERADO in  
 22 Claremore, OK. The complaint states: “A PIECE OF FURNITURE WAS LOCATED IN THE  
 23 MIDDLE OF THE HIGHWAY WHILE DRIVING, CAUSING THE DRIVER TO HIT THE  
 24 FURNITURE. DRIVER LOST CONTROL OF A VEHICLE, AND IT CRASHED INTO A  
 25 CONCRETE WALL. DRIVER'S SIDE SEAT BELT FAILED, AND **THE AIRBAGS DID**  
 26 **NOT DEPLOY.**”

27 i. NHTSA complaint #10158090 dated Tuesday, May 23, 2006, reported an  
 28 accident on Sunday, February 26, 2006 involving a 2004 CHEVROLET TRAILBLAZER in

1 Fayetteville, NC. The complaint states: “DT\*: THE CONTACT STATED WHILE DRIVING 50  
 2 MPH THE VEHICLE WAS INVOLVED IN A HEAD ON COLLISION WITH ANOTHER  
 3 VEHICLE. THE VEHICLE CONTINUED MOVING AND STOPPED BY COLLIDING WITH  
 4 A STORE SIGN. **THE AIR BAGS DID NOT DEPLOY** AND SEAT BELTS WERE WORN . .  
 5 . THE INSURANCE COMPANY DETERMINED THE VEHICLE WAS TOTALED DUE TO  
 6 THE ACCIDENT. THE DEALER DOES NOT HAVE THE MEANS TO TEST FOR AIR BAG  
 7 NON-DEPLOYMENT. UPDATED 1/24/2007 - \*NM”

8 j. NHTSA complaint #10161658 dated Thursday, July 6, 2006, reported an  
 9 accident on Saturday, June 3, 2006 involving a 1999 CHEVROLET BLAZER in Ludlow, MA.  
 10 The complaint states in part: “CHEVY DRIVER HIT A CAR IN HER LANE FIRST, THEN  
 11 RICOCHETED HEAD ON INTO A TREE. **NEITHER TIME DID AIRBAGS DEPLOY.**  
 12 \*TT”

13 k. NHTSA complaint #10163811 dated Friday, July 28, 2006, reported an  
 14 accident on Thursday, July 20, 2006 involving a 2000 ISUZU RODEO in Nederland, TX. The  
 15 complaint states: “A GIRL RAN A RED LIGHT AND I HIT HER IN THE PASSENGER SIDE  
 16 OF HER CAR HEAD ON WITH MY 2000 ISUZU RODEO. IT WAS A FULL FRONTAL  
 17 COLLISION FOR ME AND MY CHILDREN. LUCKILY, WE ARE ALWAYS BUCKLED UP  
 18 BECAUSE **NONE OF MY AIRBAGS DEPLOYED AT ALL.** THE OTHER CAR WAS  
 19 GOING ABOUT 60 MPH AND HER AIRBAG DEPLOYED WHEN I HIT HER BUT MINE  
 20 DID NOT. LUCKILY, MY CHILDREN WERE NOT HURT BADLY BUT  
 21 UNFORTUNATELY, I SUSTAINED NECK, BACK AND KNEE INJURIES. I WAS AND  
 22 STILL AM VERY UPSET THAT MY AIRBAGS FAILED. EVEN THE OWNER OF THE  
 23 BODY SHOP I USE WAS IN SHOCK THAT THEY DID NOT DEPLOY AS THE IMPACT  
 24 WAS ENOUGH TO SPLIT THE FRAME OF MY RODEO AND TOTAL IT OUT . . . THANK  
 25 YOU FOR YOUR TIME, I HOPE I CAN HELP ANOTHER FAMILY FROM GETTING  
 26 INJURED.”

27 l. NHTSA complaint #10217793 dated Tuesday, February 12, 2008, reported  
 28 an accident on Thursday, February 7, 2008 involving a 2006 CHEVROLET TRAILBLAZER in



1 Lakewood, OH. The complaint states: “A 2006 CHEVY TRAILBLAZER TRAVELING OVER  
 2 THE SPEED LIMIT ON MY STREET CRASHED INTO A TREE, A PARKED CAR, AND  
 3 THEN CONTINUED TO ROLL OVER ACROSS MY FRONT LAWN, LANDING  
 4 SIDEWAYS AFTER FLIPPING SEVERAL TIMES. THE OCCUPANTS WERE SEVERELY  
 5 INJURED. **NO AIRBAGS DEPLOYED DURING THE CRASH.** THE DRIVER OF THE  
 6 VEHICLE IS IN ICU NEEDING FACIAL RECONSTRUCTIVE SURGERY. \*TR”

7 m. NHTSA complaint #10221319 dated Saturday, March 15, 2008, reported  
 8 an accident on Thursday, February 21, 2008 involving a 2005 CHEVROLET TRAILBLAZER in  
 9 Clay, NY. The complaint states: “I WAS DRIVING ON A 2 LANE ROAD GOING 45MPH. A  
 10 CAR WAS FOLLOWING CLOSE BEHIND ME SO I WENT TO GET INTO RIGHT LANE  
 11 AND MY TRUCK DID 5 360 AND HIT 3 TREES HEAD ON AND **AIR BAG NEVER**  
 12 **DEPLOYED.** \*TR”

13 n. NHTSA complaint #10263896 dated Wednesday, April 1, 2009, reported  
 14 an accident on Thursday, March 26, 2009 involving a 2002 CHEVROLET TRAILBLAZER in  
 15 Elizabeth, NJ. The complaint states: “I WAS IN A CAR ACCIDENT, WHERE I WAS  
 16 TRAVELING AT ABOUT 35 MPH. AN AGGRESSIVE DRIVER SPEED AROUND ME AND  
 17 CUT ME OFF AND THAN STOMPED ON THIS BRAKES IN FRONT OF ME. DUE TO  
 18 THAT I SWERVED TO MISS HIM CLIPPING HIS RIGHT BACK LIGHT AD BUMPER  
 19 WITH MY LEFT HEADLIGHT AND BUMPER. AS I WAS SWERVING I HIT A TREE JUST  
 20 ABOUT DEAD ON WITH MY CAR . . . I HIT THE TREE AT A SPEED OF ABOUT 28-30  
 21 MPH. AFTER INITIAL IMPACT I WAS RUSHED TO THE HOSPITAL DUE TO  
 22 UNCONSCIOUS AND FACIAL CONTUSIONS. DURING THE FIRST MOMENTS AFTER  
 23 THE ACCIDENT, ONE OF THE FIRST THINGS OFFICERS, EMTS AND WITNESSES SAID  
 24 WAS “**I CAN'T BELIEVE THE AIRBAGS DIDN'T GO OFF.**” IN THE RECENT DAYS  
 25 AFTER THE ACCIDENT I HAVE HAD SEVERAL MECHANICS AND SUCH APPRAISE  
 26 THE CAR, THE ONE COMMON THEME THEY ALL SHARE IS THAT THEY SUSPECT  
 27 THERE MIGHT NOT BE AN AIRBAG WHERE IT BELONGS. OR THE LACK THERE OF.  
 28 \*TR”

o. NHTSA complaint #10463248 dated Wednesday, June 27, 2012, reported an accident on Friday, July 15, 2011 involving a 2005 GMC in Richmond, VA. The complaint states: “THE CONTACT STATED WHILE DRIVING 55 MPH, HE CRASHED INTO A TREE. **THE AIR BAGS FAILED TO DEPLOY . . .** A POLICE REPORT WAS FILED. THE MANUFACTURER WAS MADE AWARE OF THE FAILURE; HOWEVER, THEY PROVIDED NO ASSISTANCE . . . THE CONSUMER’S VEHICLE WAS DAMAGED WHEN HE TRIED TO AVOID HITTING THE VEHICLE BY SWERVING SIDEWAYS AND SLIDING INTO THE GRASS. HE TRIED STOPPING THE VEHICLE WHILE IT WAS STILL ON THE PAVEMENT BUT HE INEVITABLY RAN INTO THE DITCH AND FLEW AIRBORNE INTO A TREE, AND THE TRUCK OVERTURNED.”

p. NHTSA complaint #10524151 dated Wednesday, July 10, 2013, reported an accident on Thursday, May 30, 2013 involving a 2006 CHEVROLET TRAILBLAZER in Mansfield, OH. The complaint states: “THIS COMPLAINT IS BEING FILED ON BEHALF OF THE VEHICLE OWNER AND DRIVER. THIS CHEVY TRAILBLAZER WAS INVOLVED IN A TWO VEHICLE, DOUBLE FATAL CRASH. THE FRONT OF THE TRAILBLAZER STRUCK THE DRIVER'S SIDE DOOR OF A CAVALIER THAT FAILED TO YIELD FROM A STOP SIGN. THE TRAILBLAZER STAYED CONNECTED WITH THE CAVALIER, FORCING IT OFF THE LEFT SIDE OF THE ROADWAY AND INTO A LARGE TREE. BOTH OCCUPANTS IN THE CAVALIER WERE FATALLY INJURED. **THE FRONT AIRBAGS DID NOT DEPLOY ON THE TRAILBLAZER** AND NO EVENT WAS RECORDED ON THE AIRBAG CONTROL MODULE. \*TR”

q. NHTSA complaint #10537593 dated Tuesday, August 27, 2013, reported an accident on Tuesday, August 13, 2013 involving a 2003 CHEVROLET BLAZER in Harrison Township, MI. The complaint states: “I WAS TRAVELING SOUTHBOUND WHEN I EXPERIENCED A SEIZURE AND LOST CONTROL OF MY VEHICLE. I PROCEEDED TO VEER TO THE LEFT WHERE I CLIPPED SEVERAL CARS THAT WERE HEADED NORTHBOUND . . . I THEN PROCEEDED OVER A TREE LAWN AND INTO A PARKING LOT. I HIT A DODGE RAM PICKUP WITH THE RIGHT FRONT CORNER OF MY

1 VEHICLE AND PUSHED THAT VEHICLE INTO ANOTHER PARKED CAR THAT WAS  
 2 NEXT TO IT. BOTH VEHICLES ENDED UP SIDEWAYS AND MY VEHICLE ENDED UP  
 3 SPUN AROUND 180 DEGREES . . . THE JAWS OF LIFE WERE USED TO EXTRACT ME  
 4 FROM MY VEHICLE. I WAS TAKEN TO A LOCAL HOSPITAL WHERE IT WAS  
 5 DETERMINED THAT I SUFFERED BURST FRACTURES OF L1, L2, AND L3. I ALSO  
 6 SUFFERED AN EVULSION FRACTURE OF MY LEFT ANKLE. THE POLICE REPORT  
 7 STATES THAT I WAS TRAVELLING AT A HIGH RATE OF SPEED AND THAT THE  
 8 VEHICLES WHICH WERE NORTHBOUND WERE JUST CLIPPED. **THE AIRBAGS ARE**  
 9 **BOTH STILL WITHIN THEIR CASES AS NEITHER DEPLOYED** . . . THE INSURANCE  
 10 INVESTIGATOR EVEN EXPRESSED TO MY WIFE THAT HE WAS SURPRISED THAT  
 11 THE AIR BAG DID NOT DEPLOY.”

12 r. NHTSA complaint #10550276 dated Wednesday, October 30, 2013,  
 13 reported an accident on Monday, October 28, 2013 involving a 2006 CHEVROLET  
 14 TRAILBLAZER in Neihart, MT. The complaint states: “TL\* THE CONTACT OWNS A 2006  
 15 CHEVROLET TRAILBLAZER. THE CONTACT STATED THAT WHILE DRIVING  
 16 APPROXIMATELY 35 MPH, SHE LOST CONTROL OF THE VEHICLE WHILE DRIVING  
 17 IN SNOWY WEATHER. THE VEHICLE NOSE DIVED INTO AN EMBANKMENT AND  
 18 THEN CRASHED INTO A BOULDER. **THE AIR BAGS FAILED TO DEPLOY.** THE  
 19 CONTACT WAS TRANSPORTED TO THE HOSPITAL VIA AMBULANCE FOR  
 20 TREATMENT OF A CONCUSSION AND BRUISING. THE FRONT PASSENGER WAS  
 21 ALSO INJURED AND SUSTAINED BRUISING. THE VEHICLE WAS DESTROYED. THE  
 22 MANUFACTURER WAS MADE AWARE OF THE FAILURE.”

23 s. NHTSA complaint #10574295 dated Sunday, March 23, 2014, reported an  
 24 accident on Friday, February 21, 2014 involving a 2010 GMC TERRAIN in Saint Joe, IN. The  
 25 complaint states: “INVOLVED IN A 21 CAR PILE UP IN THE UPPER PENINSULA DURING  
 26 A COMPLETE WHITE OUT. WE WERE ONLY TRAVELING APPROXIMATELY 25  
 27 MILES PER HOUR BUT, WE DID HAVE SERIOUS IMPACT IN THE FRONT, AFTER  
 28 HITTING A TRAILER AND ALSO SERIOUS IMPACT FROM BEHIND WHEN HIT BY A

1 TRUCK AND TRAILER. **NO AIRBAGS DEPLOYED.** THE TRUCK TRAVELING AHEAD  
 2 OF US, THAT WE HIT, THE AIRBAGS DID DEPLOY. MY FATHER AND BROTHER,  
 3 WHO WERE ALSO BOTH DRIVING CHEVY TRUCKS, AND ALSO HAD SERIOUS  
 4 FRONT END DAMAGE DURING THE SAME ACCIDENT, THEIR AIRBAGS DID NOT  
 5 DEPLOY EITHER. \*TR”

6 t. NHTSA complaint #10576031 dated Monday, March 31, 2014, reported an  
 7 accident on Sunday, March 23, 2014 involving a 2012 CADILLAC SRX in Kaplan, LA. The  
 8 complaint states: “I FELL ASLEEP WHILE DRIVING, JUMPED A LEVEE, RAN THROUGH  
 9 A FENCE, AND WRECKED IN A GRASSY WATERY AREA. MY ENGINE WAS  
 10 SMASHED, THE MOTOR MOUNT BROKE, AND MY TIRES ARE PUSHED BACK. MY  
 11 **AIR BAGS DID NOT DEPLOY.** MY FACE HIT THE STEERING WHEEL AND MY NOSE  
 12 IS BROKEN. I WOULD LIKE TO FIND OUT IF THERE IS ANY RECALLS ON THIS CAR.  
 13 \*TR”

14 u. NHTSA complaint #10583703 dated Saturday, April 19, 2014, reported an  
 15 accident on Thursday, March 13, 2014 involving a 2012 GMC TERRAIN in Moneta, VA. The  
 16 complaint states: “I INADVERTENTLY VEERED OFF SIDE ROADWAY, (VA HIGHWAY  
 17 220) COLLIDING WITH A TREE/ROADSIDE SHRUBS, ETC (WAS KNOCKED  
 18 UNCONSCIOUS AS FOREHEAD HIT STEERING WHEEL ON INITIAL IMPACT).  
 19 **AIRBAGS DID NOT DEPLOY** ALLOWING ME TO SUSTAIN A HEAD INJURY THAT  
 20 KNOCKED ME UNCONSCIOUS... FOREHEAD WAS GASHED WITH SIGNIFICANT  
 21 BLEEDING. I WAS TRANSPORTED BY AMBULANCE IN UNCONSCIOUS STATE.  
 22 DAMAGE TO VEHICLE IS IN EXCESS OF \$8,000 SO FAR AS VEHICLE STILL IN  
 23 REPAIR SHOP WITH MASSIVE FRONT END DAMAGE THAT AFFECTS STEERING  
 24 LINKAGE, ETC. THE IMPACT OF VEHICLE AGAINST FOLIAGE, TREES SHRUBS,  
 25 SHOULD HAVE FORCED AIR BAGS TO DEPLOY AND I BELIEVE THAT I WOULD NOT  
 26 HAVE SUSTAINED A HEAD INJURY THAT RENDERED ME UNCONSCIOUS WITH  
 27 MILD CONCUSSION AND COULD NOT CONTROL VEHICLE LEAVING ROADWAY.  
 28 \*TR”

1                   v.       NHTSA complaint #10592423 dated Monday, May 19, 2014, reported an  
 2 accident on Thursday, May 8, 2014 involving a 2003 CHEVROLET SILVERADO in  
 3 Burtonsville, MD. The complaint states: “TRUCK COLIDED WITH GUARD RAIL.  
 4 BOUNCED OFF, HIT VEHICLE 1, THEN INTO VEHICLE 2 THEN STOPPED AFTER  
 5 HITTING VEHICLE 3 A SEMI TRUCK. ALL DAMAGE WAS DONE TO FRONT OF THE  
 6 CHEVY SILVERADO. **AT NO TIME DID THE AIRBAGS DEPLOY.**”

7                   w.       NHTSA complaint #10622016 dated Wednesday, August 13, 2014,  
 8 reported an accident on Saturday, August 9, 2014 involving a 2012 CHEVROLET TAHOE in  
 9 The Colony, TX. The complaint states: “WHILE TURNING LEFT (TAHOE) WITH A  
 10 PROTECTED GREEN ARROW AT AN X-SHAPED INTERSECTION, VEHICLE (KIA  
 11 SEDAN) AT FAULT FAILED TO YIELD AND ENTERED THE INTERSECTION AT  
 12 SPEEDS UPWARDS OF 40 MPH FROM THE LEFT OF THE TAHOE. FRONT-IMPACT  
 13 COLLISION OCCURRED . . . TAHOE STRUCK PASSENGER SIDE OF KIA SEDAN.  
 14 TRAJECTORY OF IMPACT CAUSED DIRECTIONAL CHANGES IN UPWARDS OF 90\*  
 15 FOR BOTH VEHICLES; THE FORCE OF THE PRIMARY ACCIDENT DESCRIBED ABOVE  
 16 ALSO CAUSED MENTIONED VEHICLES TO COLLIDE WITH LEFT REAR OF ANOTHER  
 17 VEHICLE (HONDA SEDAN) . . . DUE TO THE FORCE OF IMPACT, FRONT & SIDE  
 18 AIRBAGS DEPLOYED ON BOTH THE KIA SEDAN AND THE HONDA SEDAN, BUT  
 19 **FAILED TO DEPLOY ON THE TAHOE . . . FORCE WAS SUCH THAT AFTER THE**  
 20 **COLLISION, TAHOE TRANSMISSION WAS IN DRIVE, BUT REMAINED AT A**  
 21 **COMPLETE STOP. DAMAGE SUSTAINED ON THE TAHOE INCLUDE FRONT-END**  
 22 **BODY DAMAGE, ENGINE DAMAGE (VEHICLE REQUIRED TOWING AND WAS**  
 23 **INOPERABLE), AND FRAME DAMAGE, AT A MINIMUM . . . MULTIPLE FIRST-**  
 24 **RESPONDERS COMMENTED ON THE ODDITY THAT, GIVEN THE DAMAGE**  
 25 **SUSTAINED BY THE TAHOE AND THE VELOCITY AT IMPACT, THE AIRBAGS**  
 26 **DEPLOYED ON ALL VEHICLES BUT THE TAHOE. \*TR”**

27                   x.       NHTSA complaint #10641399 dated Saturday, October 4, 2014, reported  
 28 an accident on Tuesday, June 7, 2011 involving a 2002 CHEVROLET TAHOE in Cheney, WA.

1 The complaint states: “THE CONTACT STATED THAT WHILE THE DRIVER WAS  
 2 DRIVING AT 45 MPH AND ATTEMPTED TO AVOID A CRASH WITH ANOTHER  
 3 VEHICLE. AS A RESULT, THE DRIVER CRASHED INTO A GUARDRAIL AND **THE AIR**  
 4 **BAGS FAILED TO DEPLOY.** A POLICE REPORT WAS FILED. THE CONTACT WAS  
 5 TAKEN TO A HOSPITAL AND SUSTAINED INJURIES TO THE RIBS, THE COLLAR  
 6 BONES, A BRAIN TRAUMA AND A COLLAPSED LUNG. THE DRIVER SUFFERED  
 7 FROM FATAL INJURIES.”

8 y. NHTSA complaint #10767586 dated Tuesday, September 22, 2015,  
 9 reported an accident on Saturday, August 1, 2015 involving a 2004 CHEVROLET  
 10 TRAILBLAZER in Tallahassee, FL. The complaint states: “MY MOTHER WAS INVOLVED  
 11 IN A 1 CAR ACCIDENT ON BAUM RD LOCATED IN TALLAHASSEE, FL. SHE WAS THE  
 12 ONLY PASSENGER DETERMINED TO BE IN THE VEHICLE AT THE TIME OF THE  
 13 ACCIDENT. ACCORDING TO THE CRASH REPORT, D1 (DRIVER ONE) WAS  
 14 TRAVELING WESTBOUND ON BAUM RD GOING THE NORMAL POSTED SPEED OF  
 15 55MPH, WHEN SHE VEERED TOWARDS THE CENTER OF THE RD AND SUDDENLY  
 16 TURNED RIGHT VEERING OF THE RIGHT SHOULDER OF THE RD AND STRIKING  
 17 SEVERAL TREES ON THE DRIVERS SIDE AND FRONT END . . . WHEN I WENT TO  
 18 RETRIEVE MY MOTHERS THINGS FROM HER TRAILBLAZER, I NOTICED THAT **NO**  
 19 **AIR BAGS HAD DEPLOYED.** AND AS FAST AS MY MOM WAS GOING AND THE  
 20 TYPE OF IMPACT & DAMAGE HER SUV SUSTAINED, I WOULD THINK AND HOPE  
 21 THE AIRBAGS WOULD DEPLOY IN THIS TYPE OF ACCIDENT, THUS PREVENTING  
 22 SERIOUS INJURY OR DEATH. MY MOM WAS NOT SO LUCKY, AND MYSELF AND MY  
 23 FAMILY HAVE ENDURED GREAT PAIN FROM LOOSING HER SO SUDDENLY.”

24 z. NHTSA complaint #10907149 dated Friday, September 16, 2016, reported  
 25 an accident on Thursday, September 1, 2016 involving a 2006 CADILLAC SRX in Happy  
 26 Valley, OR. The complaint states: “THE VEHICLE HIT A CURB AND DROVE INTO A  
 27 BUILDING. **THE AIR BAGS FAILED TO DEPLOY.** THE CONTACT SUSTAINED  
 28

1 INJURIES THAT REQUIRED MEDICAL ATTENTION . . . THE MANUFACTURER WAS  
2 NOTIFIED OF THE FAILURE.”

3 127. GM knew or had reason to know about these complaints, which are publicly  
4 available on NHTSA’s website. Indeed, many complaints explicitly state that GM was directly  
5 informed of and/or investigated these suspicious accidents. For example:

6 a. A complaint about an August 2018 accident in a 2008 GMC Acadia details  
7 that the airbags and seatbelt pretensioners did not deploy after the complainant’s wife fell asleep  
8 at the wheel and struck a utility pole and then a large dirt embankment—which caused her to “hit  
9 the steering column so hard . . . it broke the column and broke her sternum,” and caused the  
10 granddaughter in the passenger seat to break her back in two places. It continues that “GENERAL  
11 MOTORS . . . SENT A MAN TO DOWNLOAD THE COMPUTER INFORMATION THEY  
12 SENT ME A COPY OF THE INFO AND LATER CONTACTED ME SAYING THE INFO  
13 SHOWED EVERYTHING WAS WORKING PROPERLY.” NHTSA complaint #11066850.

14 b. After a July 2014 head on collision at 50 MPH where the airbags did not  
15 deploy in a 2007 Silverado, totaling the vehicle, another driver was “TOLD BY GM THAT  
16 CRASH DID NOT MEET CRITERIA FOR DEPLOYMENT.” The driver expressed skepticism  
17 about this response, and in the complaint, stated “A HEAD ON COLLISION AT 50 MPH THAT  
18 TOTALED 2500 SERIES CHEVY TRUCK. HARD FOR ME TO BELIEVE . . . DO I NEED  
19 TO [BE] CONCERNED?” NHTSA complaint #10608220.

20 c. Another driver reported on a May 2014 accident in a 2012 GMC Terrain in  
21 Moneta, VA. The driver struck “something” head on after veering off the highway and proceeded  
22 through trees and brush. They were knocked unconscious after hitting their head on the steering  
23 wheel upon the first impact, as the airbags had failed to deploy. They were transported to a  
24 hospital by ambulance and spent two days in inpatient care. The driver later “CONTACTED  
25 GMC CORPORATE . . . TO ADVISE MY CONCERNS FOR SAFETY . . . RECEIVED A  
26 FOLLOW UP TELEPHONE CALL FROM GMC REPRESENTATIVE . . . HE EXPRESSED  
27 NO INTEREST IN MY COMPLAINT . . . REFUSED TO COMMENT ON MY STATEMENT  
28 THAT AIR BAG FAILED TO DEPLOY RESULTING IN EXTENSIVE DAMAGE TO FRONT



1 OF VEHICLE AND SUSTAINING A HEAD INJURY AS NO BAG DEPLOYED . . . I WAS  
 2 ADVISED THAT GMC HAD NO FURTHER INTEREST IN THIS MATTER AND WOULD  
 3 NOT EVALUATE MY SAFETY CONCERNS.” NHTSA complaint #10588334.

4 d. After a July 2012 accident involving a 2012 GMC Terrain in San  
 5 Clemente, CA, in which the Terrain was hit multiple times in an intersection in the driver’s front  
 6 end, but no airbags deployed, resulting in whiplash and contusions to the driver, a GM  
 7 representative responded to a complaint lodged by the driver’s parents and stated that there was  
 8 “NO NEED FOR DEPLOYMENT” because it was a “LOW THRESHOLD EVENT.” NHTSA  
 9 complaint #10466384.

10 e. After hitting a patch of black ice at 58 MPH in a Chevrolet Silverado in  
 11 January 2008, another complainant described that they lost control of the vehicle, ran off the road,  
 12 crashed into a telephone pole and ultimately into a frozen embankment. The airbags did not  
 13 deploy, causing the driver to hit the steering wheel. As the complainant relates, they “FILED A  
 14 COMPLAINT WITH THE MANUFACTURER, BUT THE COMPLAINT WAS DENIED. THE  
 15 MANUFACTURER WAS UNABLE TO DIAGNOSE THE VEHICLE; HOWEVER, AFTER  
 16 INSPECTION OF THE VEHICLE, THE MANUFACTURER CONFIRMED THAT THE AIR  
 17 BAGS WERE ENABLED AT THE TIME OF IMPACT. THEY DID NOT GIVE AN  
 18 EXPLANATION FOR THE DEPLOYMENT FAILURE.” NHTSA complaint #10238395.

19 f. In a report about a March 2006 accident involving a 2005 Cadillac  
 20 Escalade in Louisville, KY, the complainant describes that after none of the airbags deployed in a  
 21 front end collision in their 4-week old vehicle, they “CALLED CADILLAC CUSTOMER  
 22 SERVICE AND WAS GIVEN AN AIRBAG HISTORY LESSON VIA TELEPHONE FROM  
 23 SOMEONE THAT HAD NEVER SEEN MY VEHICLE OR INSPECTED IT FOR DAMAGE  
 24 AFTER THE ACCIDENT. AT THE END OF OUR CONVERSATION I WAS TOLD ALL  
 25 WAS OK, NONE OF MY AIRBAGS SHOULD HAVE DEPLOYED AND NOT TO WORRY  
 26 ABOUT IT. THE ENTIRE FRONT END OF MY VEHICLE WAS KNOCKED OFF, THE  
 27 FRAME HAS MULTIPLE CRACKS AND IS BENT AS A RESULT OF THE COLLISION  
 28

1 AND THE COLLISION CENTER IS 90% CERTAIN THE VEHICLE IS NOT REPAIRABLE.  
 2 \*JB” NHTSA complaint #10152376.

3 g. After an August 2004 accident involving a 1999 Chevrolet Astro in  
 4 Norfolk, ~~Virginia~~ VA in which the vehicle jumped a curb, struck ~~and a~~ fire hydrant, and then  
 5 struck a tree without the airbags deploying, the driver was taken by ambulance to the hospital for  
 6 head and neck injuries. After the accident, the “CONSUMER CONTACTED THE  
 7 MANUFACTURER AND A REPRESENTATIVE CAME DOWN TO MEET WITH THE  
 8 DEALER AND CONSUMER. THE REPRESENTATIVE INFORMED CONSUMER THAT  
 9 THE VEHICLE WAS FUNCTIONING AS DESIGNED.” NHTSA complaint # 10087718.

10 h. Another driver contacted GM after the airbags did not deploy in a February  
 11 2004 front end collision at 25-30 MPH in their 2000 Isuzu Rodeo in Westwood, NJ. “THE  
 12 CONSUMER CONTACTED THE MANUFACTURER ABOUT THE AIR BAGS BUT THE  
 13 REPRESENTATIVE DID NOT SEEM TO BE TOO CONCERNED ABOUT THE  
 14 SITUATION.” NHTSA complaint #10087550.

15 i. Another driver described a head on collision at 39 MPH in their 2002  
 16 Chevrolet Tahoe in which the airbags did not deploy and the seatbelts did not tighten. The driver  
 17 hit their head on the steering wheel, knocking them unconscious. A readout from the vehicle’s  
 18 computer showed the seatbelts were in working order, and GM responded by sending a  
 19 representative to inspect the vehicle in person. The complainant was awaiting a response from  
 20 GM at the time of the report. NHTSA complaint #10353935.

21 128. More than eight hundred similar complaints—i.e., frontal crashes in the Class  
 22 Vehicles with airbag and seatbelt failures following multiple impacts, or, potentially long-soft  
 23 frontal impacts—are attached hereto as Exhibit A.<sup>52</sup> These accidents are relevant, and suspicious.

24  
 25 <sup>52</sup> The accidents in the preceding paragraph and Exhibit A include data for Class Vehicles in  
 26 model years 1999-2014. In the interest of efficiency, Plaintiffs have not supplemented the  
 27 accidents included in Exhibit A from the previously filed version with the first amended  
 28 complaint, but note that significant numbers of similar consumer reports of multi-impact and  
front-end impact accidents with airbag and seatbelt failures have continued to accrue in the  
NHTSA database in model years 1999-2014, as well as later model years, in the time since  
Exhibit A was originally prepared in 2021. Plaintiffs are prepared to submit supplemental  
examples of such incidents at the Court’s request.

because they include hallmarks of the SDM Calibration Defect (airbag and seatbelt failures), under the very crash conditions where it arises, and in the specific population of vehicles Plaintiffs allege to be impacted.

129. In addition to these consumer complaints, a separate, public dataset from NHTSA, the Fatality Analysis Reporting System (“FARS”) provides a nationwide census of crashes that resulted in fatal injuries. While the complaints outlined above are reported to NHTSA by consumers and can include any type of complaint or incident, FARS data is reported by state agencies responsible for monitoring all qualifying fatal crashes in their states. To be included in FARS data, a crash must involve a motor vehicle traveling on a public road and result in the death of a person in one or more of the vehicles involved in the crash within 30 days of the crash. The dataset collects information on over 100 different data elements that characterize the crash, the vehicles, and the people involved—including whether or not the airbags deployed.

130. NHTSA’s FARS dataset also reveals a recurring pattern of suspicious nondeployments during frontal crashes (i.e., the crash dynamics that can implicate the SDM Calibration Defect) and reinforces the extremely high stakes of such incidents. From 1999 to present, FARS data reflects at least 1,946 frontal crashes where the airbags did not deploy in a Class Vehicle—1,167 of which occurred in 2009 or later, after New GM was formed. This same data reflects that at least 1,298 individual occupants (drivers or passengers) in a Class Vehicle were injured or killed in these crashes.

**D. Despite its knowledge, GM misrepresented and concealed important information about the SDM Calibration Defect and Class Vehicle safety.**

131. For many consumers, including Plaintiffs, safety is one of the most important factors when buying or leasing a vehicle. GM capitalized on this fact in advertising and other consumer-facing representations about the Class Vehicles and touted the safety of the Class Vehicles in national marketing campaigns.

132. In nationwide advertisement campaigns and promotional materials, GM maintained that the Class Vehicles were safe and reliable, and it did not correct representations about the Class Vehicles’ safety and reliability made by Old GM in the past. Instead, GM has

1 repeatedly touted the Class Vehicles' passenger safety systems and assured consumers they could  
 2 be relied upon to activate the airbags and seatbelts during a crash. These representations are false  
 3 and misleading because of what they fail to say; GM uniformly failed to disclose that the SDM  
 4 Calibration Defect could—at the worst possible moment—prevent the airbags and seatbelts from  
 5 activating.

6 133. Plaintiffs and Class members, directly or indirectly, were exposed to these  
 7 advertisements and promotional materials prior to purchasing or leasing their Class Vehicles. ~~If~~  
 8 ~~GM had instead chosen to disclose the truth about the SDM Calibration Defect—including at~~  
 9 ~~dealerships, on its website, in brochures, press releases or in other promotional materials—~~  
 10 ~~Plaintiffs and Class members would have seen those disclosures.~~ The misleading statements about  
 11 Class Vehicles' safety in GM's advertisements and promotional materials, as well as GM's  
 12 omission of the truth about the SDM Calibration Defect, influenced Plaintiffs and Class  
 13 members' decisions to purchase or lease Class Vehicles. If GM had instead chosen to disclose the  
 14 truth about the SDM Calibration Defect, Plaintiffs and Class members would have seen those  
 15 disclosures. Indeed, Plaintiffs would have had multiple opportunities to receive information about  
 16 the SDM Calibration Defect if GM chose to disclose it, including at dealerships, on GM's  
 17 website, in radio or television advertisements, brochures, press releases or in other promotional  
 18 materials, as well as in news media reports that would likely follow from the revelation of a  
 19 serious safety defect in millions of GM vehicles.

20 **1. Labels and window stickers on the Class Vehicles stated that they were**  
 21 **equipped with working airbags and seatbelts and failed to disclose the**  
 22 **SDM Calibration Defect.**

23 134. To sell vehicles in the United States, GM was required to “certify to the distributor  
 24 or dealer at delivery that the vehicle or equipment complies with applicable motor vehicle safety  
 25 standards prescribed” by NHTSA under Chapter 301 of Title 49 of the U.S. Code. GM “may not  
 26 issue the certificate if, in exercising reasonable care,” they have “reason to know the certificate is  
 27 false or misleading in a material respect.” 49 U.S.C. § 30115; *see also* 49 U.S.C. § 30112.

28 135. Because “[c]ertification of a vehicle must be shown by a label permanently fixed  
 to the vehicle,” all Class Vehicles have a permanent label certifying compliance with the safety

1 regulations prescribed by NHTSA. Since all the Class Vehicles are passenger vehicles, the  
 2 permanent label must state: “This vehicle conforms to all applicable Federal motor vehicle safety,  
 3 bumper, and theft prevention standards in effect on the date of manufacture shown above.” 49  
 4 C.F.R. § 567.4(g)(5).

5 136. These labels were false and misleading because they failed to warn consumers  
 6 about the risk that the SDM would fail during a frontal crash, and instead indicated that the  
 7 passenger safety system would function properly. *See* 49 C.F.R. § 571.208 (S4.1.5.4, S4.1.5.5)  
 8 (Federal motor vehicle safety standards requiring Occupant Restraint Systems with airbags and  
 9 seatbelts).

10 137. Vehicle manufacturers have a duty to disclose known safety defects to the public  
 11 and to NHTSA. When a vehicle manufacturer learns of a safety defect, federal law requires it to  
 12 disclose the defect to NHTSA and to the owners, purchasers, and dealers of the vehicle. 49 U.S.C.  
 13 § 30118(c). Indeed, GM Parent acknowledges these obligations in its public SEC filings. In its  
 14 Form 10-K for fiscal year 2019, GM Parent states: “If we or NHTSA determine that either a  
 15 vehicle or vehicle equipment does not comply with a safety standard or if a vehicle defect creates  
 16 an unreasonable safety risk, the manufacturer is required to notify owners and provide a remedy.”

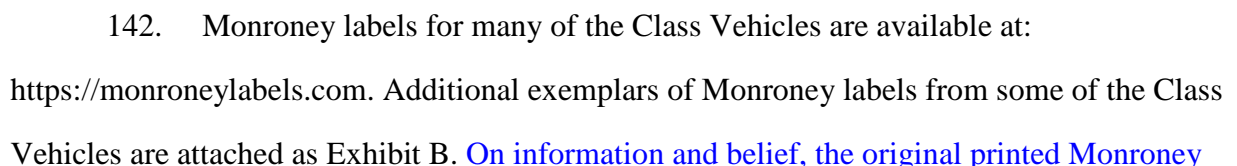
17 138. The interiors of the Class Vehicles also contain prominent labels that alert the  
 18 driver and passengers to the vehicle’s airbag system. For example, steering wheels and passenger  
 19 dashboards typically have labels identifying the airbag and safety restraint system (or “SRS”).

20 139. GM was also specifically required by law to include in their vehicles warning  
 21 labels that alerted consumers of the need to perform airbag maintenance. For example, S4.5.1 of  
 22 49 C.F.R. § 571.208 states:

23 Air bag maintenance or replacement information. If the vehicle  
 24 manufacturer recommends periodic maintenance or replacement of  
 25 an inflatable restraint system, as that term is defined in S4.1.5.1(b)  
 26 of this standard, installed in a vehicle, that vehicle shall be labeled  
 27 with the recommended schedule for maintenance or replacement.  
 28 The schedule shall be specified by month and year, or in terms of  
 vehicle mileage, or by intervals measured from the date appearing  
 on the vehicle certification label provided pursuant to 49 CFR Part  
 567. The label shall be permanently affixed to the vehicle within  
 the passenger compartment and lettered in English in block capital  
 and numerals not less than three thirty-seconds of an inch high.



141. GM also distributed the Class Vehicles with so-called “Monroney” labels (also known as “window stickers”) that described the equipment and safety features of the vehicles, including airbags. Dealers sell Class Vehicles to consumers with these labels visible. An image of a Monroney label for the 2012 Silverado is included below as a representative example. In the center of the image, it features a “Five Star” frontal crash rating for drivers. Under “Safety & Security” features, it touts the “dual stage” airbags.



1 [labels for the Class Vehicles included the same content as pertains to safety and airbags as the](#)  
 2 [exemplar Monroney labels from monroneylabels.com.](#)

3 143. As demonstrated by these examples, Monroney labels uniformly assured  
 4 consumers that the Class Vehicles had working airbags and seatbelts. This information would  
 5 have suggested to any reasonable consumer that the passenger safety system did not suffer from a  
 6 defect and would perform its intended function of activating the seatbelts and airbags [when](#)  
 7 [needed](#) during a frontal collision.

8 ~~11. Had GM disclosed the defective nature of the SDM software calibration on the~~  
 9 ~~Monroney labels or other labels or in marketing for the Class Vehicles, Plaintiffs and Class~~  
 10 ~~members would have seen that disclosure.~~

11 **2. GM published owners' manuals for the Class Vehicles that detailed**  
 12 **their safety features but did not disclose the SDM Calibration Defect.**

13 144. GM (and Old GM before it) published owners' manuals for each of the Class  
 14 Vehicles, ~~which were~~ [and](#) distributed and [made them](#) available throughout the United States.  
 15 These manuals were directed at consumers and included misleading statements regarding  
 16 seatbelts, airbags, and passenger safety systems. These statements uniformly omitted any warning  
 17 to consumers that the SDM could effectively shut off during a crash after just 45 milliseconds, [or](#)  
 18 [that the airbags and seatbelt pretensioners may not deploy when expected.](#)

19 145. Representative examples of statements from owners' manuals with materially  
 20 misleading omissions concerning the effectiveness of their airbags follow in the paragraphs  
 21 below.

22 146. The manual for the 2002 Cadillac Escalade provides extensive detail about the  
 23 vehicle's airbags, including the below details and images. In addition to explaining the types of  
 24 airbags and where they are located, the manual specifically alerts consumers that the airbags "are  
 25 designed to inflate in moderate to severe frontal or near-frontal crashes" where "the impact speed  
 26 is above the system's designed 'threshold level.'" As to frontal airbags, it explains that they have  
 27 been "designed to help reduce the risk of injury from the force of an inflating airbag."  
 28



## Supplemental Restraint Systems (SRS)

This part explains the frontal and side impact Supplemental Restraint Systems (SRS) or air bag systems.

Your vehicle has four air bags -- a frontal air bag for the driver, another frontal air bag for the right front passenger, a side impact air bag for the driver, and another side impact air bag for the right front passenger.

Frontal air bags are designed to help reduce the risk of injury from the force of an inflating frontal air bag. But these air bags must inflate very quickly to do their job and comply with federal regulations.

### When should an air bag inflate?

The driver's and right front passenger's frontal air bags are designed to inflate in moderate to severe frontal or near-frontal crashes. But they are designed to inflate only if the impact speed is above the system's designed "threshold level."

If your vehicle goes straight into a wall that doesn't move or deform, the threshold level is about 9 to 16 mph (14 to 26 km/h). The threshold level can vary, however, with specific vehicle design, so that it can be somewhat above or below this range.

If your vehicle strikes something that will move or deform, such as a parked car, the threshold level will be higher. The driver's and right front passenger's frontal air bags are not designed to inflate in rollovers, side impacts, or rear impacts, because inflation would not help the occupant.

## How the Air Bag Systems Work

### Where are the air bags?



The driver's frontal air bag is in the middle of the steering wheel.



The right front passenger's frontal air bag is in the instrument panel on the passenger's side.

The driver's side impact air bag is in the side of the driver's seatback closest to the door.

## How the Air Bag Systems Work

### Where are the air bags?



The driver's frontal air bag is in the middle of the steering wheel.



The right front passenger's frontal air bag is in the instrument panel on the passenger's side.

The driver's side impact air bag is in the side of the driver's seatback closest to the door.

### When Should an Airbag Inflate?

Frontal airbags are designed to inflate in moderate to severe frontal or near-frontal crashes to help reduce the potential for severe injuries mainly to the driver's or right front passenger's head and chest. However, they are only designed to inflate if the impact exceeds a predetermined deployment threshold. Deployment thresholds are used to predict how severe a crash is likely to be in time for the airbags to inflate and help restrain the occupants.

Whether the frontal airbags will or should deploy is not based on how fast your vehicle is traveling. It depends largely on what you hit, the direction of the impact, and how quickly your vehicle slows down.

All of the airbags in the vehicle will have the word AIRBAG embossed in the trim or on an attached label near the deployment opening.

For frontal airbags, the word AIRBAG will appear on the middle part of the steering wheel for the driver and on the instrument panel for the right front passenger.

With seat-mounted side impact airbags, the word AIRBAG will appear on the side of the seatback closest to the door.

With roof-rail airbags, the word AIRBAG will appear along the headliner or trim.

Airbags are designed to supplement the protection provided by safety belts. Even though today's airbags are also designed to help reduce the risk of injury from the force of an inflating bag, all airbags must inflate very quickly to do their job.

### Airbag System

The vehicle has the following airbags:

- A frontal airbag for the driver.
- A frontal airbag for the right front passenger.
- A seat-mounted side impact airbag for the driver.
- A seat-mounted side impact airbag for the right front passenger.
- A roof-rail airbag for the driver, passenger seated directly behind the driver, and the third row outboard passenger position.
- A roof-rail airbag for the right front passenger, passenger seated directly behind the right front passenger, and the third row outboard passenger position.

147. The manuals for the 2009 Chevy Traverse and 2010 Buick Enclave include similar details and images. Like the manual for the 2002 Cadillac Escalade, they also assure consumers that the vehicle's airbags are "designed to help reduce the risk of injury from the force of an inflating bag" and, thus, that the aggressive deployment problems that plagued first-generation airbags had been alleviated. It also assures that the frontal airbags have been "designed to inflate



1 in moderate to severe frontal crashes to help reduce the potential for severe injuries....” It  
 2 continues that airbag “deployment thresholds are used to predict how severe a crash is likely to be  
 3 in time for the airbags to inflate and help restrain the occupants.” While it ~~gives~~provides very  
 4 specific detail ~~on~~about the way the passenger safety systems should function, the manual notably  
 5 fails to say that the deployment thresholds are wholly and intentionally ignored just 45  
 6 milliseconds into a crash sequence, preventing the airbags and seatbelts from functioning when  
 7 they need to.

8 148. The manual for the 2014 GMC Acadia provides additional detail about how the  
 9 passenger safety system functions. It explains that “Airbags are designed to inflate if the impact  
 10 exceeds the specific airbag system’s deployment thresholds.” Yet again, however, the manual  
 11 does not indicate that the SDM and its sensors are rendered useless in multi-impact crashes that  
 12 endure for longer than a specific, 45-millisecond time frame.

#### Where Are the Airbags?



The driver frontal airbag is in the center of the steering wheel.



The front outboard passenger frontal airbag is in the passenger side instrument panel.



If the vehicle has a front center airbag, it is in the inboard side of the driver seatback.

#### When Should an Airbag Inflate?

This vehicle is equipped with airbags. See *Airbag System* on page 3-23. Airbags are designed to inflate if the impact exceeds the specific airbag system's deployment threshold. Deployment thresholds are used to predict how severe a crash is likely to be in time for the airbags to inflate and help restrain the occupants. The vehicle has electronic sensors that help the airbag system determine the severity of the impact. Deployment thresholds can vary with specific vehicle design.

Frontal airbags are designed to inflate in moderate to severe frontal or near frontal crashes to help reduce the potential for severe injuries, mainly to the driver's or front outboard passenger's head and chest.

Whether the frontal airbags will or should inflate is not based primarily on how fast the vehicle is traveling.

It depends on what is hit, the direction of the impact, and how quickly the vehicle slows down.

Frontal airbags may inflate at different crash speeds depending on whether the vehicle hits an object straight on or at an angle, and whether the object is fixed or moving, rigid or deformable, narrow or wide.

Frontal airbags are not intended to inflate during vehicle rollovers, rear impacts, or many side impacts.

In addition, the vehicle has advanced technology frontal airbags. Advanced technology frontal airbags adjust the restraint according to crash severity.

The front center airbag, if equipped, is designed to inflate in moderate to severe side crashes depending upon the location of the impact, when either side of the vehicle is struck. In addition, the front center airbag is designed to inflate when the sensing system predicts that the vehicle is about to roll over on its

side. The front center airbag is not designed to inflate in frontal impacts, near frontal impacts, or rear impacts.

Seat-mounted side impact airbags are designed to inflate in moderate to severe side crashes depending on the location of the impact.

Seat-mounted side impact airbags are not designed to inflate in frontal impacts, near frontal impacts, rollovers, or rear impacts.

A seat-mounted side impact airbag is designed to inflate on the side of the vehicle that is struck.

Roof-rail airbags are designed to inflate in moderate to severe side crashes depending on the location of the impact. In addition, these roof-rail airbags are designed to inflate during a rollover or in a severe frontal impact. Roof-rail airbags are not designed to inflate in rear impacts. Both roof-rail airbags will inflate when either side of the vehicle is struck, if the sensing

3. **GM marketed the Class Vehicles to be safe and reliable but failed to mention the SDM Calibration Defect.**

149. Like its other consumer-facing representations, GM's advertisements for the Class Vehicles left out a crucial part of the story. By uniformly omitting any information about the SDM Calibration Defect, GM misled consumers into believing that their airbags and seatbelts would function properly in a crash, despite its knowledge to the contrary.

150. A 2013 press release about the 2014 Chevy Silverado 1500, GMC Sierra, and Sierra Denali 1500 is further illustrative of GM's misleading statements about the Class Vehicles. Acknowledging that safety is "as important to truck buyers as it is to car buyers," Gay Kent, GM general director of Vehicle Safety and Crashworthiness, stated that the "Silverado and Sierra set a benchmark for pickup truck safety by offering a full array of advanced features designed to protect occupants before, during and after a collision." The press release noted the vehicle's "[s]ix standard air bags and 360-degree sensor system, including dual-stage frontal air bags, head-curtain side-impact air bags with rollover protect, and front outboard seat-mounted side-impact air bags."

151. Brochures and press releases for other Class Vehicles use similar language to send a misleading message of safety. Illustrative examples are ~~described~~ listed below.

a. Beginning with the 1999 Chevy Blazer, GM promised to go "to the ends of the earth to bring you driving security," assuring "peace of mind" with its "mainstay features such as Next Generation driver and right-front-passenger airbags."

b. "Because safety and security are so important to your family," the brochure for the 2002 Chevy Astro reads, "Astro features a comprehensive system to help you feel secure while you're driving." Among other safety features, "[s]tandard driver and front-passenger air bags . . . [are] designed to give you peace of mind. Chevy Astro. It's the midsize van that's serious about safety and security."

1 c. The brochure for the 2006 GMC Yukon promises, “should the worst  
2 happen, your Yukon will protect you and your passengers with front and rear crush zones, a  
3 sturdy steel safety cage, up to four air bags and a host of other important safety features.”

4 d. The brochure for the 2008 Buick Enclave explains that “[s]afety and  
5 protection were top priorities in the design of the Enclave” and touts the vehicle’s “360°  
6 perimeter safety system [that] will deploy the appropriate airbags.”

7 e. Promising “[f]eelings of security and confidence,” the brochure for the  
8 2009 Chevy Equinox states the vehicle’s “dual-stage frontal and head-curtain side-impact air  
9 bags” helped earn it “the highest possible government rating for frontal crash tests – five stars.”

10 f. Declaring that “[s]afety never goes out of style,” the brochure for the 2009  
11 Chevy Traverse highlights the vehicle’s “five-star frontal and side-impact crash test ratings” and  
12 its “six air bags that help protect all three rows of seating.”

13 g. A press release for the 2009 Cadillac Escalade ESV goes further,  
14 proclaiming that the “Escalade is designed to be among the industry’s safest and most secure  
15 vehicles, with numerous safety systems and crash-avoidance technologies.”

16 h. “Speaking of safety,” the brochure for the 2010 Buick Enclave reads,  
17 “Enclave has earned an impressive five-star crash rating for both front and side impacts . . . .  
18 Five-star rating is for the driver and front passenger seating positions in the frontal crash test and  
19 for the front and rear seating positions in the side-impact crash test.”

20 i. The brochure for the 2010 GMC Terrain describes the vehicle as “the state  
21 of the art in air bags” and contends that “[s]egment-best safety is anticipated, with features that  
22 include . . . six standard air bags: dual frontal airbags; head curtain side air bags and pelvic/thorax  
23 seat-mounted side airbags.”

24 j. The brochure for the 2010 Silverado assures that the “head of security  
25 never goes off the clock,” boasting of a “five-star frontal crash test rating,” including through its  
26 “driver and right-front passenger dual-stage airbags.”  
27  
28

1 k. A press release for the 2011 Cadillac Escalade Hybrid explains, “[f]ront-  
2 image airbags for the driver and passenger have been designed to protect the head during a frontal  
3 crash.”

4 l. According to the brochure for the 2011 Cadillac SRX, “[p]assenger safety  
5 is a primary consideration throughout the engineering process.” If an incident occurs, “the SRX  
6 looks out for you and yours,” with its “six standard airbags, including advanced, frontal dual-  
7 stage and seat mounted side-impact airbags for the driver and front-seat passenger, as well as  
8 first- and second- row outboard head-curtain airbags.”

9 m. Describing Buick’s “holistic[]” approach to safety, the brochure for the  
10 2012 Enclave proclaims, “Enclave’s approach to safety helps you and your companions feel safe  
11 and secure before, during and after your travels.” Inside the vehicle, “all rows have curtain side-  
12 impact air bags with rollover protection, along with driver and front-passenger side-impact and  
13 ~~dual-stage~~ dual-stage airbags.”

14 n. In a 2013 press release announcing that NHTSA gave “its highest possible  
15 5-star Overall Score” to a number of Chevrolet vehicles, including the Traverse and the  
16 Silverado, Kent said “We design safety and crashworthiness into our vehicles very early in  
17 development.” He continued, “We are committed to offering advanced safety technologies on a  
18 broad range of models . . . . All of our vehicles are designed to provide continuous protection for  
19 customers before, during and after a crash.”

20 o. A press release for the 2013 Buick Enclave likewise publicized Buick’s  
21 safety record: “In 2012, every Buick model was named a Top Safety Pick by the Insurance  
22 Institute for Highway Safety, underscoring the brand’s commitment to safety leadership. The  
23 2013 builds on that distinction with the industry’s first front center side air bag – a standard  
24 feature.”

25 p. “With head curtain side-impact air bags reaching from the front to the third  
26 row of seating for outboard passengers,” the 2014 brochure for the GMC Yukon XL reads,  
27 “Yukon is engineered to help protect passengers regardless of where they’re seated.”  
28

q. Claiming to “set[] the standard . . . in everything from safety to performance,” the brochure for the 2014 Cadillac Escalade touts the vehicle’s “eight standard airbags,” including “[d]ual-stage driver and front passenger, front-impact, Automatic Occupant Sensing System, driver and front passenger seat-mounted side-impact airbags for thorax and pelvic protection and head-curtain side-impact airbags with rollover protection for all outboard passenger rows.”

r. The brochure for the 2014 Buick Enclave promises that the vehicle has “your back, front and sides, proclaiming that “in an industry first, the standard driver’s seat side-mounted front center air bag adds another layer of protection by providing cushioning between you and your front passenger to help reduce injuries in side impacts.” The brochure includes the below picture, indicating that the airbags will function as expected.



152. Based on information and belief, every single Class Vehicle advertisement omitted any mention that the vehicles’ airbags and seatbelts could fail in a serious frontal collision due to the SDM Calibration Defect.

4. ~~Defendants~~ GM provided warranties to repair defects in the Class Vehicles and have not done so.

153. ~~Defendants~~ GM also provided Plaintiffs and Class members with an express warranty “to correct any vehicle defect, not slight noise, vibrations, or other normal characteristics of the vehicle related to materials or workmanship” in the Class Vehicles.

154. The warranty terms became part of the basis of the bargain when Plaintiffs and ~~each~~ Class ~~member~~ members purchased or leased their Class Vehicles.



155. Plaintiffs and each Class member have had sufficient direct dealings with either Defendants or their agents (including dealerships) to establish privity of contract between Defendants, on the one hand, and Plaintiffs and each Class member, on the other hand, as to the express and implied warranties described in the Claims for Relief below.

156. Nonetheless, privity is not required here because Plaintiffs and each Class member are intended third-party beneficiaries of contracts between Defendants and their dealers, and of their implied warranties. The dealers were not intended to be the ultimate consumers of the Class Vehicles and have no rights under the warranty agreements provided with the Class Vehicles; the warranty agreements were designed for and intended to benefit consumers only. Finally, privity is also not required because the Class Vehicles are dangerous instrumentalities due to the safety defect in the SDM Calibration.

\* \* \*

157. GM's deceptive actions harmed Plaintiffs and the Class(es). As a result of GM's unfair, deceptive, and/or fraudulent business practices, and failure to disclose that the Class Vehicles carried a dangerous safety defect that would cause the passenger safety systems to shut off during certain types of accidents, owners and lessees of the Class Vehicles have lost money and/or property.

#### V. CLASS ACTION ALLEGATIONS

158. This case is about GM's legal responsibility for its knowledge, conduct, and products. The proposed Class members' claims all derive directly from a single course of conduct by GM. The objective facts are the same for all Class members. Within each Count asserted by Plaintiffs on behalf of themselves and the ~~respective~~ proposed ~~Classes~~ Class, the same legal standards govern. ~~Additionally, many states share the same legal standards and elements of proof, facilitating the certification of multistate or nationwide classes for some or all claims.~~

159. Accordingly, Plaintiffs bring this lawsuit as a class action on their own behalf, and on behalf of all other persons similarly situated, as members of the proposed ~~Classes~~ Class pursuant to Federal Rules of Civil Procedure 23(a), (b)(2), and/or (b)(3), and/or (c)(4). This action satisfies the numerosity, commonality, typicality, adequacy, predominance, and superiority

requirements of those provisions. Certification of Plaintiffs' claims for class-wide treatment is appropriate because Plaintiffs can prove the elements of the claims on a class-wide basis using the same evidence as would be used in individual actions alleging the same claims.

**A. The Class Definition**

160. The "Class Vehicles" herein include all vehicles in the United States that contain the SDM Calibration Defect that were (1) manufactured, sold, distributed, or leased by Defendants or (2) manufactured, sold, distributed, or leased by Old GM and purchased or leased by Plaintiffs or a Class member after July 10, 2009.

161. ~~On information and belief, the~~ The SDM Calibration Defect exists in all GM trucks and SUVs starting with model year 1999. This would include, for example, trucks and SUVs such as the Silverado, Tahoe, Astro, and Trailblazer. The information presently available to Plaintiffs shows that, after it was introduced in or about 1999, the calibration defect persisted in GM SUVs through model year 2018. Discovery will reveal when, if ever, GM discontinued use of the SDM Calibration Defect in its trucks and SUVs. This information is uniquely in the Defendants' hands, as only GM (and Delco, n/k/a Aptiv) possess the software calibration files for GM vehicles that will demonstrate the presence of the defect in the software; these files are not downloadable or otherwise accessible from the vehicles themselves, meaning Plaintiffs are unable to obtain those files on their own.

162. The proposed ~~Nationwide Class includes all persons and entities that purchased or leased a Class Vehicle in the United States, including its territories. Alternatively, Plaintiffs propose separate State Classes as to the state claims herein, each of which~~ Class includes all persons and entities that purchased or leased a Class Vehicle in ~~that the~~ state of California.

163. Excluded from the ~~Classes~~ Class are:

a. Defendants' officers, directors and employees ~~and participants in the Porsche Associate Lease Program;~~ Defendants' affiliates and affiliates' officers, directors, and employees; Defendants' distributors and distributors' officers, directors, and employees; and

b. Judicial officers and their immediate family members and associated court staff assigned to this case.

164. Certification of Plaintiffs' claims for class-wide treatment is appropriate because Plaintiffs can prove the elements of their claims on a class-wide basis using the same evidence as would be used in individual actions alleging the same claims.

165. Plaintiffs reserve the right to amend the Class definitions if discovery and further investigation reveal that any Class should be expanded, reduced, divided into additional subclasses under Rule 23(c)(5), or otherwise modified.

**B. Numerosity: Federal Rule of Civil Procedure 23(a)(1)**

166. The members of the ~~Classes~~ Class are so numerous and geographically dispersed that individual joinder of all Class members is impracticable. There are millions of Class Vehicles ~~and Class members~~ nationwide, a significant number of which are in the state of California. The precise number and identities of ~~Nationwide Class and State~~ the California Class members may be ascertained from Defendants' records and motor vehicle regulatory data. Class members may be notified of the pendency of this action by recognized, Court-approved notice dissemination methods.

**C. Commonality and Predominance: Federal Rule of Civil Procedure 23(a)(2) and 23(b)(3)**

167. This action involves common questions of law and fact, which predominate over any questions affecting individual Class members. These include, without limitation, the following:

- a. Whether the Class Vehicles' SDM software calibration is defective, as described herein;
- b. Whether Defendants knew, or should have known, about the SDM Calibration Defect, and, if so, how long they have or should have known about it;
- c. Whether Defendants had a duty to disclose the defective nature of the Class Vehicles to Plaintiffs and Class members;
- d. Whether Defendants' concealment of the SDM Calibration Defect caused Plaintiffs and Class members to act to their detriment by purchasing or leasing the Class Vehicles;

1 e. Whether Defendants' certifications concerning vehicle safety were  
2 misleading considering the risk that the SDMs will not trigger airbags and seatbelts during certain  
3 types of collisions;

4 f. Whether Defendants' conduct tolls any or all applicable limitations periods  
5 by acts of fraudulent concealment, application of the discovery rule, or equitable estoppel;

6 g. Whether Defendants misrepresented that the Class Vehicles were safe;

7 h. Whether Defendants concealed the SDM Calibration Defect;

8 i. Whether Defendants' statements, concealments, and omissions regarding  
9 the Class Vehicles were material, in that a reasonable consumer could consider them important in  
10 purchasing, leasing, selling, maintaining, or operating such vehicles;

11 j. Whether Defendants engaged in unfair, deceptive, unlawful, and/or  
12 fraudulent acts or practices, in trade or commerce, by failing to disclose that the Class Vehicles  
13 were designed, manufactured, sold, and leased with defective airbag components;

14 k. Whether the Class Vehicles were unfit for the ordinary purposes for which  
15 they were used, in violation of the implied warranty of merchantability;

16 l. Whether Defendants' concealment of the true defective nature of the Class  
17 Vehicles caused their market price to incorporate a premium reflecting the assumption by  
18 consumers that the Class Vehicles were equipped with fully functional passenger safety systems  
19 and, if so, the market value of that premium; and

20 m. Whether Plaintiffs and the other Class members are entitled to damages  
21 and other monetary relief and, if so, in what amount.

22 **D. Typicality: Federal Rule of Civil Procedure 23(a)(3)**

23 168. Plaintiffs' claims are typical of the claims of Class members whom they seek to  
24 represent under Fed. R. Civ. P. 23(a)(3), because Plaintiffs and each Class member purchased or  
25 leased a Class Vehicle and were comparably injured through Defendants' wrongful conduct as  
26 described above. Plaintiffs and the other Class members suffered damages as a direct proximate  
27 result of the same wrongful practices by Defendants. Plaintiffs' claims arise from the same  
28 practices and courses of conduct that give rise to the claims of the other Class members.

1 Plaintiffs' claims are based upon the same legal theories as the claims of the other Class  
2 members.

3 **E. Adequacy: Federal Rule of Civil Procedure 23(a)(4)**

4 169. Plaintiffs will fairly and adequately represent and protect the interests of the Class  
5 members as required by Fed. R. Civ. P. 23(a)(4). Plaintiffs' interests do not conflict with the  
6 interests of the Class members. Plaintiffs have retained counsel competent and experienced in  
7 complex class action litigation, including automobile defect litigation and other consumer  
8 protection litigation. Plaintiffs intend to prosecute this action vigorously. Neither Plaintiffs nor  
9 their counsel have interests that conflict with the interests of the other Class members. Therefore,  
10 the interests of the Class members will be fairly and adequately protected.

11 **F. Declaratory and Injunctive Relief: Federal Rule of Civil Procedure 23(b)(2)**

12 170. Defendants have acted or refused to act on grounds generally applicable to  
13 Plaintiffs and the other members of the Class, thereby making appropriate final injunctive relief  
14 and declaratory relief, as described below, with respect to the Class as a whole.

15 **G. Superiority: Federal Rule of Civil Procedure 23(b)(3)**

16 171. A class action is superior to any other available means for the fair and efficient  
17 adjudication of this controversy, and no unusual difficulties are likely to be encountered in its  
18 management. The damages or other financial detriment suffered by Plaintiffs and the other Class  
19 members are relatively small compared to the burden and expense that would be required to  
20 individually litigate their claims against Defendants such that it would be impracticable for  
21 members of the ~~Classes~~ Class to individually seek redress for Defendants' wrongful conduct.

22 172. Even if Class members could afford individual litigation, the court system could  
23 not. Individualized litigation creates a potential for inconsistent or contradictory judgments and  
24 increases the delay and expense to all parties and the court system. By contrast, the class action  
25 device presents far fewer management difficulties and provides the benefits of single  
26 adjudication, economy of scale, and comprehensive supervision by a single court.

1 **VI. ANY APPLICABLE STATUTES OF LIMITATION ARE TOLLED**

2 173. Defendants have known of the SDM Calibration Defect since at least 2009, when  
 3 GM learned, through books, records, and personnel, that Old GM had launched the defective  
 4 ~~algorithm-calibration strategy~~ despite clear warnings of the risk of doing so, and then continued to  
 5 use that defective software strategy thereafter. They obtained further knowledge of the risks of the  
 6 SDM Calibration Defect from lawsuits and multiple suspicious accidents (involving airbag and  
 7 seatbelt failures in frontal accidents) occurring in practically every year since, which provided  
 8 additional and confirmatory notice of the continued risks of the SDM Calibration Defect.

9 ~~2. —Despite this knowledge, for years, Defendants did not disclose the seriousness of~~  
 10 ~~the issue and in fact concealed its prevalence. In so doing, Defendants have failed to warn~~  
 11 ~~consumers, initiate timely recalls, or inform NHTSA, as GM is obligated to do.~~

12 174. 3.Defendants GM had a duty to disclose the SDM Calibration Defect to consumers  
 13 and NHTSA. ~~Contrary to this duty, GM~~ Instead, GM knowingly, affirmatively, and actively  
 14 concealed the defect from regulators and consumers by continuing to distribute, sell, and/or lease  
 15 the Class Vehicles to Plaintiffs and the Class members; to advertise the safety of the Class  
 16 Vehicles; and to fail to notify regulators or Plaintiffs and the Class members about the true nature  
 17 of the Class Vehicles.

18 175. As of the date of this Complaint, GM still has not disclosed, and continues to  
 19 conceal, that the Class Vehicles are defective, that the SDM Calibration Defect could prevent the  
 20 airbags and seatbelts from activating during certain kinds of frontal collisions, and that these  
 21 Class Vehicles' safety systems may fail them in life-threatening collisions. Despite its knowledge  
 22 of the SDM Calibration Defect and its attendant safety risks, GM continues to market the Class  
 23 Vehicles based on superior safety and reliability while omitting the disclosure safety and  
 24 reliability risks associated with the SDM Calibration Defect.

25 176. Plaintiffs and members of the proposed Class could not have discovered through  
 26 the exercise of reasonable diligence that GM was concealing the SDM Calibration Defect in their  
 27 vehicles and misrepresenting the defective nature of the Class Vehicles.



177. With respect to Class Vehicles that have not experienced airbags or seatbelt failure, Plaintiffs and other Class members did not discover, could not reasonably have discovered, and had no reason to suspect that their Class Vehicles are defective, that GM calibrated the software program that controls the SDM to prevent airbag and seatbelt deployment just 45 milliseconds after a crash has begun, that—in affirmatively blocking these critical safety features after 45 milliseconds—GM significantly and unnecessarily increased the risk of injury and death in frontal crashes, that the safety of their Class Vehicles is impaired by this defect such that the Class Vehicles’ safety system may fail them in potentially deadly collisions, or that, as a result of the foregoing, they overpaid for their vehicles, and/or the value of their vehicles is diminished.

178. With respect to Class Vehicles that have experienced airbag and/or seatbelt failure prior to the filing of this Complaint, Class members did not discover and could not reasonably have discovered that such failure was due to a defect known to GM through a dangerous and defective SDM software calibration.

179. Plaintiffs and other Class members did not discover, and did not know of, facts that would have caused a reasonable person to suspect that GM did not report this material information within their knowledge to consumers, dealerships, or relevant authorities; nor would a reasonable and diligent investigation have disclosed that GM was aware of the defective nature of the SDM software calibration and the Class Vehicles in which it was incorporated.

180. ~~4.~~ Due to the highly technical nature of the SDM Calibration Defect, Plaintiffs and Class members were unable to independently discover it using reasonable diligence. ~~Prior to the retention of~~ Absent counsel and ~~without~~ third-party ~~experts~~ consultants with relevant expertise, Plaintiffs and Class members lack the necessary expertise to analyze the software algorithm for the SDMs, or vehicle safety system performance in and accident, and to understand its defective nature. GM has not issued a recall or issued other similar public statements about the SDM Calibration Defect, and Plaintiffs first learned of the defective nature of the SDM software calibration in their vehicles, and of GM’s scheme to design and sell vehicles with defective SDM software calibrations, only in connection with retaining counsel and filing this lawsuit in 2021

(for Plaintiff Vargas and Milstead). Plaintiff Ray learned of the SDM Calibration Defect in connection with retention of counsel in late 2020, and was also aware of the pendency of this putative class action before filing his claims in this pleading.

181. For the foregoing reasons, GM is estopped from relying on any statutes of limitation or repose as a defense in this action. All applicable statutes of limitation and repose have been tolled by operation of the discovery rule and by GM's fraudulent concealment with respect to all claims against GM.

~~5. Accordingly: (1) Defendants' fraudulent concealment tolls the statute of limitations; (2) Defendants are estopped from relying on the statute of limitations; and (3) the statute of limitations is tolled by the discovery rule.~~

## **VII. CAUSES OF ACTION**

### ~~**A. Claims Asserted on Behalf of the Nationwide Class**~~

#### **~~NATIONWIDE~~ COUNT I: FRAUD BY CONCEALMENT (Common Law)**

182. Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set forth herein.

183. Plaintiffs bring this claim against all Defendants on behalf of themselves and the Nationwide California State Class under the common law of fraudulent concealment, ~~as there are no true conflicts among various states' laws of fraudulent concealment. In the alternative, Plaintiffs bring this claim on behalf of the State Classes against all Defendants.~~

184. Defendants are liable for both fraudulent concealment and non-disclosure. *See, e.g.,* Restatement (Second) of Torts §§ 550-51 (1977).

185. Defendants intentionally and knowingly concealed and suppressed material facts from regulators and consumers regarding the SDM Calibration Defect that causes the airbags and seatbelts to fail in prolonged onset, complex, or otherwise multi-impact accidents, causing a serious risk ~~or~~ of injury or death.

1           186. A reasonable consumer would not have expected that the Class Vehicles contained  
2 a software program that was calibrated to prevent seatbelt tightening and airbag deployment  
3 during certain types of frontal crashes. Defendants knew that reasonable consumers expect that  
4 their vehicle has working airbags and seatbelt pretensioners and would rely on those facts in  
5 deciding whether to purchase, lease, or retain a new or used motor vehicle. Whether a  
6 manufacturer's products are safe and reliable, and whether that manufacturer stands behind its  
7 products, are material concerns to a consumer.

8           187. Defendants ensured that Plaintiffs and the Class did not discover this information  
9 by actively concealing and misrepresenting the true nature of the Class Vehicles' safety systems.  
10 Defendants intended for Plaintiffs and the Class to rely on their omissions—which they did by  
11 purchasing and leasing the Class Vehicles at the prices they paid.

12           188. Defendants had a duty to disclose the SDM Calibration Defect because:

13           a. GM had exclusive and/or far superior knowledge and access to the facts  
14 about this hidden and complex safety defect. Defendants also knew that these technical facts were  
15 not known to or reasonably discoverable by Plaintiffs and the Class; GM knew the SDM  
16 Calibration Defect (and its safety risks) was a material fact that would affect Plaintiffs' or Class  
17 members' decisions to buy or lease Class Vehicles; GM is subject to statutory duties to disclose  
18 known safety defects to consumers and to NHTSA; and GM made incomplete representations  
19 about the safety and reliability of the Class Vehicles and their passenger safety systems, while  
20 purposefully withholding material facts about a known safety defect. In uniform advertising and  
21 materials provided with each Class Vehicle, Defendants intentionally concealed, suppressed, and  
22 failed to disclose to Plaintiffs and the Class that the Class Vehicles contained the dangerous SDM  
23 Calibration Defect. Because they volunteered to provide information about the Class Vehicles  
24 that they offered for sale to Plaintiffs and the Class, Defendants had the duty to disclose the whole  
25 truth. They did not.

26           189. To this day, Defendants have not made full and adequate disclosure and continue  
27 to conceal material information regarding the SDM Calibration Defect. The omitted and  
28 concealed facts were material because a reasonable person would find them important in

1 purchasing, leasing, or retaining a new or used motor vehicle, and because they directly impact  
2 the value of the Class Vehicles purchased or leased by Plaintiffs and the Class.

3 190. Defendants actively concealed or suppressed these material facts, in whole or in  
4 part, to maintain a market for their vehicles, to protect profits, and to avoid costly recalls that  
5 would hurt the GM brand's image. They did so at the expense of Plaintiffs and the Class. Had  
6 they been aware of the SDM Calibration Defect in the Class Vehicles, and Defendants' callous  
7 disregard for safety, Plaintiffs and the Class either would not have paid as much as they did for  
8 their Class Vehicles, or they would not have purchased or leased them.

9 191. Accordingly, Defendants are liable to Plaintiffs and the Class for their damages in  
10 an amount to be proven at trial, including, but not limited to, their lost overpayment for the Class  
11 Vehicles at the time of purchase or lease.

12 192. Defendants' acts were done maliciously, oppressively, deliberately, with intent to  
13 defraud; in reckless disregard of Plaintiffs' and the Class' rights and well-being; and to enrich  
14 themselves. Their misconduct warrants an assessment of punitive damages in an amount  
15 sufficient to deter such conduct in the future, which amount shall be determined according to  
16 proof at trial.

17 **~~NATIONWIDE~~-COUNT II:**  
18 **UNJUST ENRICHMENT**  
19 **(Common Law)**

20 193. Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set  
21 forth herein.

22 194. Plaintiffs [Richard Vargas and Arthur Ray](#) assert this Unjust Enrichment count on  
23 behalf of themselves and the ~~Nationwide Class or, in the alternative, on behalf of the State~~  
24 ~~Classes~~[California State Class](#).

25 195. By reason of their conduct, Defendants caused damages to Plaintiffs and Class  
26 members. Plaintiffs and Class members conferred a benefit on the Defendants by overpaying for  
27 Class Vehicles at prices that were artificially inflated by Defendants' concealment of the SDM  
28 Calibration Defect and misrepresentations regarding the Class Vehicles' safety.

196. As a result of Defendants' fraud and deception, Plaintiffs and Class members were not aware of the true facts concerning the Class Vehicles and did not benefit from the Defendants' misconduct.

197. Defendants knowingly benefitted from their unjust conduct. They sold and leased Class Vehicles equipped with the SDM Calibration Defect for more than what the vehicles were worth, at the expense of Plaintiffs and Class members.

198. Defendants readily accepted and retained these benefits from Plaintiffs and Class members.

199. It is inequitable and unconscionable for Defendants to retain these benefits because they misrepresented that the Class Vehicles were safe, and intentionally concealed, suppressed, and failed to disclose the SDM Calibration Defect to consumers. Plaintiffs and Class members would not have purchased or leased the Class Vehicles or would have paid less for them, had Defendants not concealed the SDM Calibration Defect.

200. Plaintiffs and Class members do not have an adequate remedy at law.

201. Equity cannot in good conscience permit the Defendants to retain the benefits that they derived from Plaintiffs and Class members through unjust and unlawful acts, and therefore restitution or disgorgement of the amount of the Defendants' unjust enrichment is necessary.

## **B. ~~State-Specific Claims~~**

### **1. ~~Alabama~~**

#### **~~ALABAMA COUNT I:~~**

#### **~~Violations of the Alabama Deceptive Trade Practices Act~~**

#### **~~Ala. Code § 8-19-1, et seq.~~**

#### **~~(On Behalf of the Alabama State Class)~~**

~~1. Plaintiffs incorporate by reference all allegations in this Complaint as though fully set forth herein.~~

~~2. Plaintiffs Aaron Jackson and David Taylor (for the purposes of this count, "Plaintiffs") bring this claim on behalf of themselves and the Alabama State Class against all Defendants.~~

1           ~~3.——Plaintiffs and Alabama State Class members are “consumers” within the meaning~~  
 2 ~~of Ala. Code § 8-19-3(2).~~

3           ~~4.——Plaintiffs and Alabama State Class members and Defendants are “persons” within~~  
 4 ~~the meaning of Ala. Code § 8-19-3(5).~~

5           ~~5.——The Class Vehicles are “goods” within the meaning of Ala. Code § 8-19-3(3).~~

6           ~~6.——Defendants were and are engaged in “trade or commerce” within the meaning of~~  
 7 ~~Ala. Code § 8-19-3(8).~~

8           ~~7.——The Alabama Deceptive Trade Practices Act (“Alabama DTPA”) declares several~~  
 9 ~~specific actions to be unlawful, including: “(5) Representing that goods or services have~~  
 10 ~~sponsorship, approval, characteristics, ingredients, uses, benefits, or qualities that they do not~~  
 11 ~~have,” “(7) Representing that goods or services are of a particular standard, quality, or grade, or~~  
 12 ~~that goods are of a particular style or model, if they are of another,” and “(27) Engaging in any~~  
 13 ~~other unconscionable, false, misleading, or deceptive act or practice in the conduct of trade or~~  
 14 ~~commerce.” Ala. Code § 8-19-5.~~

15           ~~8.——In the course of their business, Defendants violated the Alabama DTPA by~~  
 16 ~~knowingly and intentionally misrepresenting, omitting, concealing, and/or failing to disclose~~  
 17 ~~material facts regarding the reliability, safety, and performance of the Class Vehicles, as detailed~~  
 18 ~~above.~~

19           ~~9.——Specifically, by misrepresenting the Class Vehicles as safe and/or free from~~  
 20 ~~defects, and by failing to disclose and actively concealing the dangers and risk posed by the Class~~  
 21 ~~Vehicles and/or the SDM Calibration Defect, Defendants engaged in unfair methods of~~  
 22 ~~competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the~~  
 23 ~~conduct of any trade or commerce, as prohibited by Ala. Code § 8-19-5.~~

24           ~~10.——Defendants’ unfair or deceptive acts or practices, including misrepresentations,~~  
 25 ~~concealments, omissions, and/or suppressions of material facts, had a tendency or capacity to~~  
 26 ~~mislead and create a false impression in consumers, and were likely to and did in fact deceive~~  
 27 ~~reasonable consumers, including Plaintiffs and Alabama State Class members, about the true~~  
 28



1 ~~safety and reliability of Class Vehicles, the quality of the Class Vehicles, and the true value of the~~  
2 ~~Class Vehicles.~~

3 ~~11.—Defendants’ scheme and concealment of the SDM Calibration Defect and true~~  
4 ~~characteristics of the passenger safety systems in the Class Vehicles were material to Plaintiffs~~  
5 ~~and Alabama State Class members, as the Defendants intended. Had they known the truth,~~  
6 ~~Plaintiffs and Alabama State Class members would not have purchased or leased the Class~~  
7 ~~Vehicles, or would have paid significantly less for them.~~

8 ~~12.—Plaintiffs and Alabama State Class members had no way of discerning that~~  
9 ~~Defendants’ representations were false and misleading and/or otherwise learning the facts that~~  
10 ~~Defendants had concealed or failed to disclose. Plaintiffs and Alabama State Class members did~~  
11 ~~not, and could not, unravel Defendants’ deception on their own.~~

12 ~~13.—Defendants had an ongoing duty to Plaintiffs and Alabama State Class members to~~  
13 ~~refrain from unfair or deceptive practices under the Alabama DTPA in the course of their~~  
14 ~~business. Specifically, Defendants owed Plaintiffs and Alabama State Class members a duty to~~  
15 ~~disclose all the material facts concerning the SDM Calibration Defect in the Class Vehicles~~  
16 ~~because they possessed exclusive knowledge, they intentionally concealed the defect from~~  
17 ~~Plaintiffs and Alabama State Class members, and/or they made misrepresentations that were~~  
18 ~~misleading because they were contradicted by withheld facts.~~

19 ~~14.—Defendants’ violations present a continuing risk to Plaintiffs and Alabama State~~  
20 ~~Class members, as well as to the general public. Defendants’ unlawful acts and practices~~  
21 ~~complained of herein affect the public interest.~~

22 ~~15.—Plaintiffs and Alabama State Class members suffered ascertainable losses and~~  
23 ~~actual damages as a direct and proximate result of the Defendants’ concealment,~~  
24 ~~misrepresentations, and/or failure to disclose material information.~~

25 ~~16.—Defendants were provided notice of the issues raised in this count and this~~  
26 ~~Complaint by a notice letter sent August 20, 2021 pursuant to Ala. Code § 8-19-10(e). Because~~  
27 ~~the Defendants failed to adequately remedy their unlawful conduct within the requisite time~~  
28

period, Plaintiffs seeks all damages and relief to which they and Alabama State Class members are entitled.

17. Pursuant to Ala. Code § 8-19-10, Plaintiffs and the Alabama State Class members seek an order enjoining the Defendants' unfair or deceptive acts and/or practices and awarding damages and any other just and proper relief available under the Alabama DTPA.

**ALABAMA COUNT II:  
Breach of Express Warranty  
Ala. Code §§ 7-2-313 and 7-2A-210  
(On Behalf of the Alabama State Class)**

**COUNT III:  
Violation of California Consumers Legal Remedies Act  
Cal. Civ. Code § 1750, et seq.**

202. 18. Plaintiffs re-allege and incorporate by reference all preceding allegations as though fully set forth herein.

**(On Behalf of the California State Class)**

1. Plaintiffs re-allege and incorporate by reference all preceding allegations as though fully set forth herein.

203. 2. Plaintiffs Ramiro Pereda, James Milstead, and Richard Vargas (for the purposes of this count, "Plaintiffs") P

19. Plaintiffs Aaron Jackson and David Taylor (for the purposes of this count, "Plaintiffs") bring this claim on behalf of themselves and the Alabama State Class against all Defendants.

20. Defendants are and were at all relevant times "merchant[s]" with respect to motor vehicles under Ala. Code §§ 7-2-104(1) and 7-2A-103(3), and a "seller" of motor vehicles under § 7-2-103(1)(d).

21. With respect to leases, Defendants are and were at all relevant times "lessors" of motor vehicles under Ala. Code. § 7-2A-103(1)(p).

22. The Class Vehicles are and were at all relevant times "goods" within the meaning of Ala. Code §§ 7-2-105(1) and 7-2A-103(1)(h).

1           ~~23.—In connection with the purchase or lease of Class Vehicles, the Defendants~~  
2 ~~provided Plaintiffs and Alabama State Class members with written express warranties covering~~  
3 ~~the repair or replacement of components that are defective in materials or workmanship.~~

4           ~~24.—Defendants' warranties formed the basis of the bargain that was reached when~~  
5 ~~Plaintiffs and Alabama State Class members unknowingly purchased or leased Class Vehicles~~  
6 ~~that came equipped with the SDM Calibration Defect.~~

7           ~~25.—However, Defendants knew or should have known that the warranties were false~~  
8 ~~and/or misleading. Specifically, Defendants were aware of the SDM Calibration Defect in the~~  
9 ~~Class Vehicles, which made the vehicles inherently defective and dangerous at the time that they~~  
10 ~~were sold and leased to Plaintiffs and Alabama State Class members.~~

11           ~~26.—Plaintiffs and Alabama State Class members reasonably relied on the Defendants'~~  
12 ~~express warranties when purchasing or leasing their Class Vehicles.~~

13           ~~27.—Defendants knowingly breached their express warranties to repair defects in~~  
14 ~~materials and workmanship by failing to repair the SDM Calibration Defect in the Class Vehicles.~~  
15 ~~Defendants also breached their express warranties by providing a product containing defects that~~  
16 ~~were never disclosed to Plaintiffs and Alabama State Class members.~~

17           ~~28.—Plaintiffs and Alabama State Class members have provided the Defendants with~~  
18 ~~reasonable notice and opportunity to cure the breaches of their express warranties by way of letter~~  
19 ~~sent by Plaintiffs on August 20, 2021. Defendants are further on notice due to numerous public~~  
20 ~~NHTSA complaints and individual lawsuits, as detailed herein.~~

21           ~~29.—Alternatively, any opportunity to cure the breach is unnecessary and futile.~~

22           ~~30.—As a direct and proximate result of the Defendants' breach of express warranties,~~  
23 ~~Plaintiffs and Alabama State Class members have been damaged in an amount to be proven at~~  
24 ~~trial.~~

**ALABAMA COUNT III:  
Breach of Implied Warranty of Merchantability  
Ala. Code §§ 7-2-314 and 7-2A-212  
(On Behalf of the Alabama State Class)**

~~31. Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set forth herein.~~

~~32. Plaintiffs Aaron Jackson and David Taylor (for the purposes of this count, “Plaintiffs”) bring this claim on behalf of themselves and the Alabama State Class against all Defendants.~~

~~33. Defendants are and were at all relevant times “merchant[s]” with respect to motor vehicles under Ala. Code §§ 7-2-104(1) and 7-2A-103(3), and a “seller” of motor vehicles under § 7-2-103(1)(d).~~

~~34. With respect to leases, Defendants are and were at all relevant times “lessors” of motor vehicles under Ala. Code. § 7-2A-103(1)(p).~~

~~35. The Class Vehicles are and were at all relevant times “goods” within the meaning of Ala. Code §§ 7-2-105(1) and 7-2A-103(1)(h).~~

~~36. A warranty that the Class Vehicles were in merchantable condition and fit for the ordinary purpose for which vehicles are used is implied by law pursuant to Ala. Code §§ 7-2-314 and 7-2A-212.~~

~~37. The Class Vehicles did not comply with the implied warranty of merchantability because, at the time of sale and at all times thereafter, they were defective and not in merchantable condition, would not pass without objection in the trade, and were not fit for the ordinary purpose for which vehicles were used. Specifically, the Class Vehicles suffer from the SDM Calibration Defect, which may cause the airbags and seatbelt to fail to deploy during an accident, rendering the Class Vehicles inherently defective and dangerous.~~

~~38. Defendants were provided reasonable notice of these issues by way of a letter sent by Plaintiffs on August 20, 2021, as well as numerous public NHTSA complaints and individual lawsuits, as detailed herein.~~

~~39. Alternatively, any opportunity to cure the breach is unnecessary and futile.~~

40. ~~As a direct and proximate result of Defendants' breach of the implied warranty of merchantability, Plaintiffs and Alabama State Class members have been damaged in an amount to be proven at trial.~~

**2. Alaska**

**ALASKA COUNT I:**

**~~Violations of the Alaska Unfair Trade Practices and Consumer Protection Act~~  
~~Alaska Stat. Ann. § 45.50.471 et seq.~~  
~~(On Behalf of the Alaska State Class)~~**

1. ~~Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.~~

2. ~~Plaintiff Stephen Duncan (for the purposes of this count, "Plaintiff") brings this claim on behalf of himself and the Alaska State Class against all Defendants.~~

3. ~~The Alaska Unfair Trade Practices And Consumer Protection Act ("Alaska CPA") declares unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce unlawful, including: "(4) representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that the person does not have;" "(6) representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;" "(8) advertising goods or services with intent not to sell them as advertised;" or "(12) using or employing deception, fraud, false pretense, false promise, misrepresentation, or knowingly concealing, suppressing, or omitting a material fact with intent that others rely upon the concealment, suppression or omission in connection with the sale or advertisement of goods or services whether or not a person has in fact been misled, deceived or damaged." Alaska Stat. § 45.50.471.~~

4. ~~In the course of their business, Defendants violated the Alaska CPA by knowingly and intentionally misrepresenting, omitting, concealing, and/or failing to disclose material facts regarding the reliability, safety, and performance of the Class Vehicles, as detailed above.~~

5. ~~Specifically, by misrepresenting the Class Vehicles as safe and/or free from defects, and by failing to disclose and actively concealing the dangers and risk posed by the Class Vehicles and/or the SDM Calibration Defect, Defendants engaged in unfair methods of~~

1 ~~competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the~~  
2 ~~conduct of any trade or commerce, as prohibited by Alaska Stat. § 45.50.471.~~

3 ~~6.——Defendants’ unfair or deceptive acts or practices, including misrepresentations,~~  
4 ~~concealments, omissions, and/or suppressions of material facts, had a tendency or capacity to~~  
5 ~~mislead and create a false impression in consumers, and were likely to and did in fact deceive~~  
6 ~~reasonable consumers, including Plaintiff and Alaska State Class members, about the true safety~~  
7 ~~and reliability of Class Vehicles, the quality of the Class Vehicles, and the true value of the Class~~  
8 ~~Vehicles.~~

9 ~~7.——Defendants’ scheme and concealment of the SDM Calibration Defect and true~~  
10 ~~characteristics of the passenger safety systems in the Class Vehicles were material to Plaintiff and~~  
11 ~~Alaska State Class members, as the Defendants intended. Had they known the truth, Plaintiff and~~  
12 ~~Alaska State Class members would not have purchased or leased the Class Vehicles, or would~~  
13 ~~have paid significantly less for them.~~

14 ~~8.——Plaintiff and Alaska State Class members had no way of discerning that~~  
15 ~~Defendants’ representations were false and misleading and/or otherwise learning the facts that~~  
16 ~~Defendants had concealed or failed to disclose. Plaintiff and Alaska State Class members did not,~~  
17 ~~and could not, unravel Defendants’ deception on their own.~~

18 ~~9.——Defendants had an ongoing duty to Plaintiff and Alaska State Class members to~~  
19 ~~refrain from unfair or deceptive practices under the Alaska CPA in the course of their business.~~  
20 ~~Specifically, Defendants owed Plaintiff and Alaska State Class members a duty to disclose all the~~  
21 ~~material facts concerning the SDM Calibration Defect in the Class Vehicles because they~~  
22 ~~possessed exclusive knowledge, they intentionally concealed the defect from Plaintiff and Alaska~~  
23 ~~State Class members, and/or they made misrepresentations that were misleading because they~~  
24 ~~were contradicted by withheld facts.~~

25 ~~10.——Defendants’ violations present a continuing risk to Plaintiff and Alaska State Class~~  
26 ~~members, as well as to the general public. Defendants’ unlawful acts and practices complained of~~  
27 ~~herein affect the public interest.~~



11. Pursuant to Alaska Stat. § 45.50.531, the Alaska State Class seeks monetary relief against Defendants measured as the greater of (a) three times the actual damages in an amount to be determined at trial or (b) \$500 for each Alaska State Class member.

12. Plaintiff and the Alaska State Class also seek an order enjoining Defendants' unfair, unlawful, and/or deceptive practices pursuant to Alaska Stat. § 45.50.535, attorneys' fees, and any other just and proper relief available under the Alaska CPA.

13. Pursuant to Alaska Stat. § 45.50.535, Plaintiffs sent notice letters to Defendants. The Alaska State Class seeks all damages and relief to which it is entitled.

**ALASKA COUNT II:  
Breach of Express Warranty  
Alaska Stat. §§ 45.02.313 and 45.12.210  
(On Behalf of the Alaska State Class)**

14. Plaintiffs re-allege and incorporate by reference all preceding allegations as though fully set forth herein.

15. Plaintiff Stephen Duncan (for the purposes of this count, "Plaintiff") brings this claim on behalf of himself and the Alaska State Class against all Defendants.

16. Defendants are and were at all relevant times "merchant[s]" with respect to motor vehicles under Alaska Stat. §§ 45.02.104(a) and 45.12.103(c)(11), and a "seller" of motor vehicles under Alaska Stat. § 45.02.103(a)(4).

17. With respect to leases, Defendants are and were at all relevant times "lessors" of motor vehicles under Alaska Stat. § 45.12.103(a)(16).

18. The Class Vehicles are and were at all relevant times "goods" within the meaning of Alaska Stat. §§ 45.02.105(a) and 45.12.103(a)(8).

19. In connection with the purchase or lease of Class Vehicles, the Defendants provided Plaintiff and Alaska State Class members with written express warranties covering the repair or replacement of components that are defective in materials or workmanship.

20. Defendants' warranties formed the basis of the bargain that was reached when Plaintiff and Alaska State Class members unknowingly purchased or leased Class Vehicles that came equipped with the SDM Calibration Defect.

21. — However, Defendants knew or should have known that the warranties were false and/or misleading. Specifically, Defendants were aware of the SDM Calibration Defect in the Class Vehicles, which made the vehicles inherently defective and dangerous at the time that they were sold and leased to Plaintiff and Alaska State Class members.

22. — Plaintiff and Alaska State Class members reasonably relied on the Defendants' express warranties when purchasing or leasing their Class Vehicles.

23. — Defendants knowingly breached their express warranties to repair defects in materials and workmanship by failing to repair the SDM Calibration Defect in the Class Vehicles. Defendants also breached their express warranties by providing a product containing defects that were never disclosed to Plaintiff and Alaska State Class members.

24. — Plaintiff and Alaska State Class members have provided the Defendants with reasonable notice and opportunity to cure the breaches of their express warranties by way of letter sent by Plaintiffs on August 20, 2021. Defendants are further on notice due to numerous public NHTSA complaints and individual lawsuits, as detailed herein.

25. — Alternatively, any opportunity to cure the breach is unnecessary and futile.

26. — As a direct and proximate result of the Defendants' breach of express warranties, Plaintiff and Alaska State Class members have been damaged in an amount to be proven at trial.

### **ALASKA COUNT III:**

#### **Breach of Implied Warranty of Merchantability**

**Alaska Stat. §§ 45.02.314 and 45.12.212**

**(On Behalf of the Alaska State Class)**

27. — Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set forth herein.

28. — Plaintiff Stephen Duncan (for the purposes of this count, "Plaintiff") brings this claim on behalf of himself and the Alaska State Class against all Defendants.

29. — Defendants are and were at all relevant times "merchant[s]" with respect to motor vehicles under Alaska Stat. §§ 45.02.104(a) and 45.12.103(c)(11), and a "seller" of motor vehicles under Alaska Stat. § 45.02.103(a)(4).

30. ~~With respect to leases, Defendants are and were at all relevant times “lessors” of motor vehicles under Alaska Stat. § 45.12.103(a)(16).~~

31. ~~The Class Vehicles are and were at all relevant times “goods” within the meaning of Alaska Stat. §§ 45.02.105(a) and 45.12.103(a)(8).~~

32. ~~A warranty that the Class Vehicles were in merchantable condition and fit for the ordinary purpose for which vehicles are used is implied by law pursuant to Alaska Stat. §§ 45.02.314 and 45.12.212.~~

33. ~~The Class Vehicles did not comply with the implied warranty of merchantability because, at the time of sale and at all times thereafter, they were defective and not in merchantable condition, would not pass without objection in the trade, and were not fit for the ordinary purpose for which vehicles were used. Specifically, the Class Vehicles suffer from the SDM Calibration Defect, which may cause the airbags and seatbelt to fail to deploy during an accident, rendering the Class Vehicles inherently defective and dangerous.~~

34. ~~Defendants were provided reasonable notice of these issues by way of a letter sent by Plaintiffs on August 20, 2021, as well as numerous public NHTSA complaints and individual lawsuits, as detailed herein.~~

35. ~~Alternatively, any opportunity to cure the breach is unnecessary and futile.~~

36. ~~As a direct and proximate result of Defendants’ breach of the implied warranty of merchantability, Plaintiff and Alaska State Class members have been damaged in an amount to be proven at trial.~~

### 3. ~~Arkansas~~

#### **~~ARKANSAS COUNT I: Violations of the Deceptive Trade Practices Act Ark. Code Ann. § 4-88-101 et seq. (On Behalf of the Arkansas State Class)~~**

1. ~~Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.~~

2. ~~Plaintiff David Stalcup (for the purposes of this count, “Plaintiff”) brings this claim on behalf of himself and the Arkansas State Class against the Defendants.~~

1           3.——~~Defendants and Arkansas State Class members are “persons” within the meaning~~  
2 ~~of Arkansas Deceptive Trade Practices Act (“Arkansas DTPA”), Ark. Code Ann. § 4-88-102(5).~~

3           4.——~~The Class Vehicles are “goods” within the meaning of Ark. Code Ann. § 4-88-~~  
4 ~~102(4).~~

5           5.——~~The Arkansas DTPA prohibits “[d]eceptive and unconscionable trade practices,”~~  
6 ~~which include, but are not limited to, a list of enumerated items, including “[e]ngaging in any~~  
7 ~~other unconscionable, false, or deceptive act or practice in business, commerce, or trade[.]” Ark.~~  
8 ~~Code Ann. § 4-88-107(a)(10). The Arkansas DTPA also prohibits the following when utilized in~~  
9 ~~connection with the sale or advertisement of any goods: “(1) The act, use, or employment by any~~  
10 ~~person of any deception, fraud, or false pretense; or (2) The concealment, suppression, or~~  
11 ~~omission of any material fact with intent that others rely upon the concealment, suppression, or~~  
12 ~~omission.” Ark. Code Ann. § 4-88-108.~~

13           6.——~~In the course of their business, Defendants violated the Arkansas DTPA by~~  
14 ~~knowingly and intentionally misrepresenting, omitting, concealing, and/or failing to disclose~~  
15 ~~material facts regarding the reliability, safety, and performance of the Class Vehicles, as detailed~~  
16 ~~above.~~

17           7.——~~Specifically, by misrepresenting the Class Vehicles as safe and/or free from~~  
18 ~~defects, and by failing to disclose and actively concealing the dangers and risk posed by the Class~~  
19 ~~Vehicles and/or the SDM Calibration Defect, Defendants engaged in unfair methods of~~  
20 ~~competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the~~  
21 ~~conduct of any trade or commerce, as prohibited by Ark. Code Ann. § 4-88-107(a)(10).~~

22           8.——~~Defendants’ unfair or deceptive acts or practices, including misrepresentations,~~  
23 ~~concealments, omissions, and/or suppressions of material facts, had a tendency or capacity to~~  
24 ~~mislead and create a false impression in consumers, and were likely to and did in fact deceive~~  
25 ~~reasonable consumers, including Plaintiff and Arkansas State Class members, about the true~~  
26 ~~safety and reliability of Class Vehicles, the quality of the Class Vehicles, and the true value of the~~  
27 ~~Class Vehicles.~~

1           9. — ~~Defendants' scheme and concealment of the SDM Calibration Defect and true~~  
2 ~~characteristics of the passenger safety systems in the Class Vehicles were material to Plaintiff and~~  
3 ~~Arkansas State Class members, as the Defendants intended. Had they known the truth, Plaintiff~~  
4 ~~and Arkansas State Class members would not have purchased or leased the Class Vehicles, or~~  
5 ~~would have paid significantly less for them.~~

6           10. — ~~Plaintiff and Arkansas State Class members had no way of discerning that~~  
7 ~~Defendants' representations were false and misleading and/or otherwise learning the facts that~~  
8 ~~Defendants had concealed or failed to disclose. Plaintiff and Arkansas State Class members did~~  
9 ~~not, and could not, unravel Defendants' deception on their own.~~

10           11. — ~~Defendants had an ongoing duty to Plaintiff and Arkansas State Class members to~~  
11 ~~refrain from unfair or deceptive practices under the Arkansas DTPA in the course of their~~  
12 ~~business. Specifically, Defendants owed Plaintiff and Arkansas State Class members a duty to~~  
13 ~~disclose all the material facts concerning the SDM Calibration Defect in the Class Vehicles~~  
14 ~~because they possessed exclusive knowledge, they intentionally concealed the defect from~~  
15 ~~Plaintiff and Arkansas State Class members, and/or they made misrepresentations that were~~  
16 ~~misleading because they were contradicted by withheld facts.~~

17           12. — ~~Defendants' violations present a continuing risk to the Arkansas State Class as~~  
18 ~~well as to the general public. Defendants' unlawful acts and practices complained of herein affect~~  
19 ~~the public interest.~~

20           13. — ~~The Arkansas State Class suffered ascertainable loss and actual damages as a~~  
21 ~~direct and proximate result of Defendants' misrepresentations and concealment of and failure to~~  
22 ~~disclose material information. Defendants had an ongoing duty to all their customers to refrain~~  
23 ~~from unfair and deceptive practices under the Arkansas DTPA. All owners of Class Vehicles~~  
24 ~~suffered ascertainable loss as a result of Defendants' deceptive and unfair acts and practices made~~  
25 ~~in the course of Defendants' business.~~

26           14. — ~~As a direct and proximate result of Defendants' violations of the Arkansas DTPA,~~  
27 ~~Plaintiff and members of the Arkansas State Class have suffered injury in fact and/or actual~~  
28 ~~damage.~~

15. ~~The Arkansas State Class seeks monetary relief against Defendants in an amount to be determined at trial. The Arkansas State Class also seeks punitive damages because Defendants acted wantonly in causing the injury or with conscious indifference to the consequences.~~

16. ~~Plaintiff also seeks an order enjoining Defendants' unfair, unlawful, and/or deceptive practices, attorneys' fees, and any other just and proper relief available under the Arkansas DTPA.~~

**ARKANSAS COUNT II:  
Breach of Express Warranty  
Ark Code Ann. §§ 4-2-313 and 4-2A-210  
(On Behalf of the Arkansas State Class)**

17. ~~Plaintiffs re-allege and incorporate by reference all preceding allegations as though fully set forth herein.~~

18. ~~Plaintiff David Stalcup (for the purposes of this count, "Plaintiff") brings this claim on behalf of himself and the Arkansas State Class against the Defendants.~~

19. ~~Defendants are and were at all relevant times "merchant[s]" with respect to motor vehicles under Ark. Code §§ 4-2-104(1) and 4-2A-103(3), and "seller[s]" of motor vehicles under § 4-2-103(1)(d).~~

20. ~~With respect to leases, Defendants are and were at all relevant times "lessors" of motor vehicles under Ark. Code § 4-2A-103(1)(p).~~

21. ~~The Class Vehicles are and were at all relevant times "goods" within the meaning of Ark. Code §§ 4-2-105(1) and 4-2A-103(1)(h).~~

22. ~~In connection with the purchase or lease of Class Vehicles, the Defendants provided Plaintiff and Arkansas State Class members with written express warranties covering the repair or replacement of components that are defective in materials or workmanship.~~

23. ~~Defendants' warranties formed the basis of the bargain that was reached when Plaintiff and Arkansas State Class members unknowingly purchased or leased Class Vehicles that came equipped with the SDM Calibration Defect.~~



24. — However, Defendants knew or should have known that the warranties were false and/or misleading. Specifically, Defendants were aware of the SDM Calibration Defect in the Class Vehicles, which made the vehicles inherently defective and dangerous at the time that they were sold and leased to Plaintiff and Arkansas State Class members.

25. — Plaintiff and Arkansas State Class members reasonably relied on the Defendants' express warranties when purchasing or leasing their Class Vehicles.

26. — Defendants knowingly breached their express warranties to repair defects in materials and workmanship by failing to repair the SDM Calibration Defect in the Class Vehicles. Defendants also breached their express warranties by providing a product containing defects that were never disclosed to Plaintiff and Arkansas State Class members.

27. — Plaintiff and Arkansas State Class members have provided the Defendants with reasonable notice and opportunity to cure the breaches of their express warranties by way of letter sent by Plaintiffs on August 20, 2021. Defendants are further on notice due to numerous public NHTSA complaints and individual lawsuits, as detailed herein.

28. — Alternatively, any opportunity to cure the breach is unnecessary and futile.

29. — As a direct and proximate result of the Defendants' breach of express warranties, Plaintiff and Arkansas State Class members have been damaged in an amount to be proven at trial.

**ARKANSAS COUNT III:  
Breach of Implied Warranty of Merchantability  
Ark. Code Ann. §§ 4-2-314 and 4-2A-212  
(On Behalf of the Arkansas State Class)**

30. — Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set forth herein.

31. — Plaintiff David Stalcup (for the purposes of this count, "Plaintiff") brings this claim on behalf of himself and the Arkansas State Class against the Defendants.

32. — Defendants are and were at all relevant times "merchant[s]" with respect to motor vehicles under Ark. Code §§ 4-2-104(1) and 4-2A-103(3), and "seller[s]" of motor vehicles under § 4-2-103(1)(d).

33. ~~With respect to leases, Defendants are and were at all relevant times “lessors” of motor vehicles under Ark. Code § 4-2A-103(1)(p).~~

34. ~~The Class Vehicles are and were at all relevant times “goods” within the meaning of Ark. Code §§ 4-2-105(1) and 4-2A-103(1)(h).~~

35. ~~A warranty that the Class Vehicles were in merchantable condition and fit for the ordinary purpose for which vehicles are used is implied by law pursuant to Ark. Code §§ 4-2-314 and 4-2A-212.~~

36. ~~The Class Vehicles did not comply with the implied warranty of merchantability because, at the time of sale and at all times thereafter, they were defective and not in merchantable condition, would not pass without objection in the trade, and were not fit for the ordinary purpose for which vehicles were used. Specifically, the Class Vehicles suffer from the SDM Calibration Defect, which may cause the airbags and seatbelt to fail to deploy during an accident, rendering the Class Vehicles inherently defective and dangerous.~~

37. ~~Defendants were provided reasonable notice of these issues by way of a letter sent by Plaintiffs on August 20, 2021, as well as numerous public NHTSA complaints and individual lawsuits, as detailed herein.~~

38. ~~Alternatively, any opportunity to cure the breach is unnecessary and futile.~~

39. ~~As a direct and proximate result of Defendants’ breach of the implied warranty of merchantability, Plaintiff and Arkansas State Class members have been damaged in an amount to be proven at trial.~~

#### **4. California**

~~CALIFORNIA COUNT I: Violation of California Consumers Legal Remedies Act~~ **Cal. Civ.**

~~Code § 1750, et seq.~~ laintiffs bring this claim on behalf of themselves and the California State Class against the Defendants.

204. ~~3.~~ Plaintiffs and California State Class members are “consumers” within the meaning of Cal. Civ. Code § 1761(d).

205. ~~4.~~ Defendants, the California Plaintiffs, and California State Class members are “persons” within the meaning of Cal. Civ. Code § 1761(c).

1           206.   ~~5.~~The Class Vehicles are “goods” within the meaning of Cal. Civ. Code § 1761(a).

2           207.   ~~6.~~The California Legal Remedies Act (“CLRA”) prohibits “unfair methods of  
3 competition and unfair or deceptive acts or practices undertaken by any person in a transaction  
4 intended to result or that results in the sale or lease of goods or services to any consumer[.]” Cal.  
5 Civ. Code § 1770.

6           208.   ~~7.~~Defendants engaged in unfair or deceptive acts or practices when, in the course  
7 of their business they, among other acts and practices, intentionally and knowingly made  
8 materially false representations regarding the reliability, safety, and performance of the Class  
9 Vehicles and/or the defective SDM software calibration, as detailed above.

10          209.   ~~8.~~Specifically, by misrepresenting the Class Vehicles as safe and/or free from  
11 defects, and by failing to disclose and actively concealing the dangers and risk posed by the Class  
12 Vehicles, Defendants engaged in one or more of the following unfair or deceptive business  
13 practices as defined in Cal. Civ. Code § 1770(a):

- 14           a. Representing that the Class Vehicles have characteristics, uses, benefits, and qualities  
15           which they do not have.
- 16           b. Representing that the Class Vehicles are of a particular standard, quality, and grade  
17           when they are not.
- 18           c. Advertising the Class Vehicles and/or with the intent not to sell or lease them as  
19           advertised.
- 20           d. Representing that the subject of a transaction has been supplied in accordance with a  
21           previous representation when it has not.

22          Cal. Civ. Code §§ 1770(a)(5), (7), (9), and (16).

23          210.   ~~9.~~Additionally, in the various channels of information through which Defendants  
24 sold and marketed Class Vehicles, Defendants failed to disclose material information concerning  
25 the Class Vehicles, which they had a duty to disclose. Defendants had a duty to disclose the  
26 defect because, as detailed above: (a) Defendants knew about the defect in the SDM software  
27 calibration in the Class Vehicles; (b) Defendants had exclusive knowledge of material facts not  
28 known to the general public or the other California State Class members; (c) Defendants actively

1 concealed material facts concerning the software calibration from the general public and Plaintiffs  
 2 and California State Class members; and (d) Defendants made partial representations about the  
 3 Class Vehicles that were misleading because they did not disclose the full truth.

4 211. ~~10.~~ Defendants' unfair or deceptive acts or practices, including their  
 5 misrepresentations, concealments, omissions, and/or suppressions of material facts, had a  
 6 tendency or capacity to mislead and create a false impression in consumers, and were likely to  
 7 and did in fact deceive reasonable consumers, including Plaintiffs and California State Class  
 8 members, about the true safety and reliability of Class Vehicles, the quality of the Class Vehicles,  
 9 and the true value of the Class Vehicles.

10 212. ~~11.~~ Plaintiffs and the other California State Class members have suffered injury in  
 11 fact and actual damages resulting from Defendants' material omissions.

12 213. ~~12.~~ Defendants' violations present a continuing risk to Plaintiffs and California  
 13 State Class members, as well as to the general public, and therefore affect the public interest.

14 214. ~~13.~~ Defendants are on notice of the issues raised in this count and this Complaint  
 15 by way of, among other things, the individual personal injury litigation and hundreds of public  
 16 consumer complaints detailed above, as well as their own intrinsic knowledge of defect they have  
 17 included in the Class Vehicles by design. Plaintiffs ~~has~~ also sent a notice letter to Defendants in  
 18 accordance with Cal. Civ. Code § 1782(a) of the CLRA, notifying Defendants of their alleged  
 19 violations of Cal. Civ. Code § 1770(a) and demanding that Defendants correct or agree to correct  
 20 the actions described therein within thirty (30) days of the notice letter. ~~If Defendants fail to do~~  
 21 ~~so, Plaintiffs will amend this Complaint as of right (or otherwise seek leave to amend the~~  
 22 ~~Complaint) to include~~ Defendants did not correct or agree to correct their actions within thirty  
 23 days, and Plaintiffs therefore seek compensatory and monetary damages to which Plaintiffs and  
 24 California Class Members are entitled under the CLRA.

25 215. ~~14.~~ Attached hereto as Exhibit C is the venue affidavit required by CLRA, Cal. Civ.  
 26 Code § 1780(d).

**~~CALIFORNIA~~ COUNT ~~III~~ IV:****Violations of the California Unfair Competition Law****Cal. Bus. & Prof. Code § 17200, et seq. ~~(On Behalf of the California State Class)~~**

216. ~~15.~~ Plaintiffs re-allege and incorporate by reference all preceding allegations as though fully set forth herein.

217. ~~16.~~ Plaintiffs ~~Ramiro Pereda, James Milstead, and Richard Vargas (for the purposes of this count, “Plaintiffs”)~~ bring this claim on behalf of themselves and the California State Class against the Defendants.

218. ~~17.~~ The California Unfair Competition Law (“UCL”), Cal. Bus. and Prof. Code § 17200, prohibits any “unlawful, unfair, or fraudulent business act or practices.”

219. ~~18.~~ Defendants’ knowing and intentional conduct described in this Complaint constitutes unlawful, fraudulent, and unfair business acts and practices in violation of the UCL. Specifically, Defendants’ conduct is unlawful, fraudulent, and unfair in at least the following ways:

a. by knowingly and intentionally concealing from Plaintiffs and California State Class members that the Class Vehicles suffer from the SDM Calibration Defect while obtaining money from the California State Class members;

b. by marketing Class Vehicles as possessing a functional, safe, and defect-free passenger safety system;

c. by purposefully designing and manufacturing the Class Vehicles to contain a defective SDM software calibration that causes airbags and seatbelts to fail in certain accidents contrary to what was disclosed to regulators and represented to consumers who purchased or leased Class Vehicles, and failing to fix the SDM Calibration Defect free of charge; and

d. by violating the other California laws alleged herein, including the False Advertising Law, Consumers Legal Remedies Act, California Commercial Code, and Song-Beverly Consumer Warranty Act.

220. ~~19.~~ Defendants’ misrepresentations, omissions, and concealment were material to the California Plaintiffs and California State Class members, and Defendants misrepresented,

concealed, or failed to disclose the truth with the intention that consumers would rely on the misrepresentations, concealment, and omissions.

221. ~~20.~~ Defendants' material misrepresentations and omissions alleged herein caused Plaintiffs and the California State Class members to make their purchases or leases of their Class Vehicles. Absent those misrepresentations and omissions, Plaintiffs and California State Class members would not have purchased or leased these vehicles or would not have purchased or leased these Class Vehicles at the prices they paid.

222. ~~21.~~ Accordingly, Plaintiffs and California State Class members have suffered ascertainable loss and actual damages as a direct and proximate result of Defendants' misrepresentations and their concealment of and failure to disclose material information.

223. ~~22.~~ Defendants' violations present a continuing risk to Plaintiffs and California State Class members, as well as to the general public. Defendants' unlawful acts and practices complained of herein affect the public interest.

224. ~~23.~~ Plaintiffs ~~requests~~ request that this Court enter an order enjoining Defendants from continuing their unfair, unlawful, and/or deceptive practices and restoring to members of the California State Class any money Defendants acquired by unfair competition, including restitution and/or restitutionary disgorgement, as provided in Cal. Bus. & Prof. Code § 17203 and Cal. Bus. & Prof. Code § 3345, and for such other relief set forth below.

**~~CALIFORNIA-COUNT III~~ IV:**

**Violations of the California False Advertising Law**

**Cal. Bus. & Prof. Code § 17500, *et seq.* ~~(On Behalf of the California State Class)~~**

225. ~~24.~~ Plaintiffs re-allege and incorporate by reference all preceding allegations as though fully set forth herein.

226. ~~25.~~ Plaintiffs ~~Ramiro Pereda, James Milstead, and Richard Vargas (for the purposes of this count, "Plaintiffs")~~ bring this claim on behalf of themselves and the California State Class against the Defendants.

227. ~~26.~~ The California False Advertising Law ("FAL"), Cal. Bus. & Prof. Code § 17500, prohibits false advertising.

1           228.   ~~27.~~ Defendants, Plaintiffs, and California State Class members are “persons” within  
2 the meaning of Cal. Bus. & Prof. Code § 17506.

3           229.   ~~28.~~ Defendants violated the FAL by causing to be made or disseminated through  
4 California and the United States, through advertising, marketing and other publications,  
5 statements regarding the safety of the Class Vehicles that were untrue or misleading, and which  
6 were known, or which by the exercise of reasonable care should have been known to Defendants,  
7 to be untrue and misleading to consumers, including California State Class members. Numerous  
8 examples of these statements and advertisements appear in the preceding paragraphs throughout  
9 this Complaint and in Exhibit B.

10          230.   ~~29.~~ The misrepresentations and omissions regarding the reliability and safety of  
11 Class Vehicles as set forth in this Complaint were material and had a tendency or capacity to  
12 mislead and create a false impression in consumers, and were likely to and did in fact deceive  
13 reasonable consumers, including Plaintiffs and California State Class members, about the true  
14 safety and reliability of Class Vehicles, the quality of the Defendants’ brands, and the true value  
15 of the Class Vehicles.

16          231.   ~~30.~~ In purchasing or leasing their Class Vehicles, the California State Class  
17 members relied on the misrepresentations and/or omissions of Defendants with respect to the  
18 safety and reliability of the Class Vehicles. Defendants’ representations turned out not to be true  
19 because the Class Vehicles are distributed with a dangerous safety defect, rendering the vehicles’  
20 airbags and seatbelts inoperative in certain types of accidents.

21          232.   ~~31.~~ Plaintiffs and the other California State Class members have suffered an injury  
22 in fact, including the loss of money or property, as a result of Defendants’ unfair, unlawful,  
23 and/or deceptive practices. Had they known the truth, Plaintiffs and California State Class  
24 members would not have purchased or leased the Class Vehicles or would have paid significantly  
25 less for them.

26          233.   ~~32.~~ Plaintiffs and California State Class members had no way of discerning that  
27 Defendants’ representations were false and misleading, or otherwise learning the facts that  
28



Defendants had concealed or failed to disclose. Plaintiffs and California State Class members did not, and could not, unravel Defendants' deception on their own.

234. ~~33.~~ Defendants had an ongoing duty to Plaintiffs and California State Class members to refrain from unfair or deceptive practices under the California False Advertising Law in the course of their business. Specifically, the Defendants owed Plaintiffs and California State Class members a duty to disclose all the material facts concerning the SDM Calibration Defect in the Class Vehicles because they possessed exclusive knowledge, they intentionally concealed the defect from Plaintiffs and California State Class members, and/or they made misrepresentations that were misleading because they were contradicted by withheld facts.

235. ~~34.~~ All of the wrongful conduct alleged herein occurred, and continues to occur, in the conduct of Defendants' business. Defendants' wrongful conduct is part of a pattern or generalized course of conduct that is still perpetuated and repeated, both in the State of California and nationwide.

236. ~~35.~~ Defendants' violations present a continuing risk to Plaintiffs and California State Class members, as well as to the general public. Defendants' unlawful acts and practices complained of herein affect the public interest.

237. ~~36.~~ Plaintiffs ~~requests~~ request that this Court enter an order enjoining Defendants from continuing their unfair, unlawful, and/or deceptive practices and restoring to the California State Class any money Defendants acquired by unfair competition, including restitution and/or restitutionary disgorgement, and for such other relief set forth below.

**~~CALIFORNIA-COUNT IV~~ VI:**

**Breach of Express Warranty**

**Cal. Com. Code §§ 2313 and 10210 ~~(On Behalf of the California State Class)~~**

238. ~~37.~~ Plaintiffs re-allege and incorporate by reference all preceding allegations as though fully set forth herein.

239. ~~38.~~ ~~Plaintiffs Ramiro Pereda, James Milstead, and Plaintiff~~ Richard Vargas ~~(for the purposes of this count, "Plaintiffs")~~ bring-brings this claim on behalf of ~~themselves~~ himself and the California State Class against the Defendants.

1           240.   ~~39.~~ Defendants are and were at all relevant times “merchant[s]” with respect to  
 2 motor vehicles under Cal. Com. Code §§ 2104(1) and 10103(c), and “sellers” of motor vehicles  
 3 under § 2103(1)(d).

4           241.   ~~40.~~ With respect to leases, Defendants are and were at all relevant times “lessors”  
 5 of motor vehicles under Cal. Com. Code § 10103(a)(16).

6           242.   ~~41.~~ All California State Class members who purchased Class Vehicles in California  
 7 are “buyers” within the meaning of Cal. Com. Code § 2103(1)(a).

8           243.   ~~42.~~ All California State Class members who leased Class Vehicles in the California  
 9 are “lessees” within the meaning of Cal. Com. Code § 10103(a)(14).

10          244.   ~~43.~~ The Class Vehicles are and were at all relevant times “goods” within the  
 11 meaning of Cal. Com. Code §§ 2105(1) and 10103(a)(8).

12          245.   ~~44.~~ In connection with the purchase or lease of Class Vehicles, Defendants  
 13 provided Plaintiffs and California State Class members with written express warranties covering  
 14 the repair or replacement of components that are defective in materials or workmanship.

15          246.   ~~45.~~ Defendants’ warranties formed the basis of the bargain that was reached when  
 16 Plaintiffs and California State Class members unknowingly purchased or leased Class Vehicles  
 17 that came equipped with the SDM Calibration Defect.

18          247.   ~~46.~~ However, Defendants knew or should have known that the warranties were  
 19 false and/or misleading. Specifically, Defendants were aware of the SDM Calibration Defect in  
 20 the Class Vehicles, which made the vehicles inherently defective and dangerous at the time that  
 21 they were sold and leased to Plaintiffs and California State Class members.

22          248.   ~~47.~~ ~~Plaintiffs~~ Plaintiff and California State Class members reasonably relied on  
 23 Defendants’ express warranties when purchasing or leasing their Class Vehicles.

24          249.   ~~48.~~ Defendants knowingly breached their express warranties to repair defects in  
 25 materials and workmanship by failing to repair the SDM Calibration Defect in the Class Vehicles.  
 26 Defendants also breached their express warranties by providing a product containing defects that  
 27 were never disclosed to ~~Plaintiffs~~ Plaintiff and California State Class members.

250. On January 27, 2023, Plaintiff Vargas presented his Class Vehicle and requested a repair for the SDM Calibration Defect under the vehicle's warranty at Anderson Chevrolet, an authorized GM dealership in Lake Elsinore, California. In response, dealership personnel informed Mr. Vargas that there were no open recalls for the SDM software in his vehicle, and thus they would not provide a repair for the SDM Calibration Defect. Based on this refusal, Mr. Vargas left the dealership without obtaining a repair for the SDM Calibration Defect under his warranty.

251. ~~49.~~ Defendants were on reasonable notice of these issues and an opportunity to cure the breaches due to Mr. Vargas' request for a repair at the dealership, as well as their extensive knowledge of the SDM Calibration Defect, as detailed herein. ~~Any opportunity to cure the breach is unnecessary and futile,~~ Defendants have not cured the breaches of their warranties despite years of knowledge of those breaches.

252. ~~50.~~ As a direct and proximate result of Defendants' breach of express warranties, ~~Plaintiffs~~ Plaintiff and California State Class members have been damaged in an amount to be proven at trial.

**~~CALIFORNIA-COUNT V~~VII:**  
**Breach of Implied Warranty of Merchantability**  
**Cal. Com. Code §§ 2314 and 10212**~~(On Behalf of the California State Class)~~

253. ~~51.~~ Plaintiffs re-allege and incorporate by reference all preceding allegations as though fully set forth herein.

254. ~~52.~~ Plaintiffs ~~Ramiro Pereda, James Milstead, and Richard Vargas (for the purposes of this count, "Plaintiffs")~~ bring this claim on behalf of themselves and the California State Class against the Defendants.

255. ~~53.~~ Defendants are and were at all relevant times "merchant[s]" with respect to motor vehicles under Cal. Com. Code §§ 2104(1) and 10103(c), and "sellers" of motor vehicles under § 2103(1)(d).

256. ~~54.~~ With respect to leases, Defendants are and were at all relevant times "lessors" of motor vehicles under Cal. Com. Code § 10103(a)(16).

1           257.   ~~55.~~ All California State Class members who purchased Class Vehicles in California  
2 are “buyers” within the meaning of Cal. Com. Code § 2103(1)(a).

3           258.   ~~56.~~ All California State Class members who leased Class Vehicles in the California  
4 are “lessees” within the meaning of Cal. Com. Code § 10103(a)(14).

5           ~~57. — The Class Vehicles are and were at all relevant times “goods” within the meaning~~  
6 ~~of Cal. Com. Code §§ 2105(1) and 10103(a)(8).~~

7           259.   ~~58.~~ The Class Vehicles are and were at all relevant times “goods” within the  
8 meaning of Cal. Com. Code §§ 2105(1) and 10103(a)(8).

9           260.   ~~59.~~ A warranty that the Class Vehicles were in merchantable condition and fit for  
10 the ordinary purpose for which vehicles are used is implied by law pursuant to Cal. Com. Code  
11 §§ 2314 and 10212.

12           261.   ~~60.~~ The Class Vehicles did not comply with the implied warranty of  
13 merchantability because, at the time of sale and at all times thereafter, they were defective and not  
14 in merchantable condition, would not pass without objection in the trade, and were not fit for the  
15 ordinary purpose for which vehicles were used. Specifically, the Class Vehicles suffer from the  
16 SDM Calibration Defect, which may cause the airbags and seatbelt to fail to deploy during an  
17 accident, rendering the Class Vehicles inherently defective and dangerous.

18           262.   ~~61.~~ Defendants were on reasonable notice of these issues and an opportunity to cure  
19 the breaches due to their extensive knowledge of the SDM Calibration Defect, as detailed herein.

20 ~~Any opportunity to cure the breach is unnecessary and futile.~~ Defendants have not cured the  
21 breaches of their warranties despite years of knowledge of those breaches.

22           263.   ~~62.~~ As a direct and proximate result of Defendants’ breach of the implied warranty  
23 of merchantability, Plaintiffs and California State Class members have been damaged in an  
24 amount to be proven at trial.

**~~CALIFORNIA~~ COUNT ~~VIII~~ VIII:**  
**Violation of Song-Beverly Consumer Warranty Act,**  
**Breach of Implied Warranty**  
**Cal Civ. Code § 1790, *et seq.* (~~On Behalf of the California State Class~~)**

264. ~~63.~~ Plaintiffs re-allege and incorporate by reference all preceding allegations as though fully set forth herein.

265. ~~64.~~ Plaintiffs ~~Ramiro Pereda, James Milstead, and Richard Vargas (for the purposes of this count, “Plaintiffs”)~~ bring this claim on behalf of themselves and the California State Class against the Defendants.

266. ~~65.~~ All California State Class members who purchased Class Vehicles in California are “buyers” within the meaning of Cal. Civ. Code § 1791(b).

267. ~~66.~~ All California State Class members who leased Class Vehicles in California are “lessors” within the meaning of Cal. Civ. Code § 1791(h).

268. ~~67.~~ The Class Vehicles are “consumer goods” within the meaning of Cal. Civ. Code § 1791(a).

269. ~~68.~~ Defendants are the “manufacturer[s]” of the Class Vehicles within the meaning of Cal. Civ. Code § 1791(j).

270. ~~69.~~ Defendants impliedly warranted to Plaintiffs and the other members of the California State Class that the Class Vehicles were “merchantable” within the meaning of Cal. Civ. Code §§ 1791.1(a) & 1792; however, the Class Vehicles do not have the quality that a buyer would reasonably expect.

271. ~~70.~~ The Class Vehicles would not pass without objection in the automotive trade due to the SDM Calibration Defect. Because the Class Vehicles contain defective SDMs, the Class Vehicles are not in merchantable condition and thus not fit for ordinary purposes.

272. ~~71.~~ The Class Vehicles are not adequately labeled because the labeling fails to disclose the SDM Calibration Defect. The Class Vehicles do not conform to the promises and affirmations made by the Defendants regarding safety.

273. ~~72.~~ The Defendants' breach of the implied warranty of merchantability caused damage to ~~Plaintiffs~~ Plaintiff Vargas and California State Class members who purchased or leased the defective Class Vehicles. The amount of damages due will be proven at trial.

274. ~~73.~~ Pursuant to Cal. Civ. Code §§ 1791.1(d) and 1794, Plaintiffs and California State Class members seek an order enjoining Defendants' unfair and/or deceptive acts or practices, damages, punitive damages, and any other just and proper relief available under the Song-Beverly Consumer Warranty Act.

**~~CALIFORNIA-COUNT VHIX:~~**  
**Violation of the Song-Beverly Consumer Protection Act,**  
**Breach of Express Warranty**  
**Cal Civ. Code § 1790, et seq. ~~(On Behalf of the California State Class)~~**

275. ~~74.~~ Plaintiffs re-allege and incorporate by reference all preceding allegations as though fully set forth herein.

276. ~~75.~~ ~~Plaintiffs Ramiro Pereda, James Milstead, and Richard Vargas (for the purposes of this count, "Plaintiffs") bring~~ Plaintiff Vargas brings this claim on behalf of ~~themselves~~ himself and the California State Class against the Defendants.

277. ~~76.~~ All California State Class members who purchased Class Vehicles in California are "buyers" within the meaning of Cal. Civ. Code § 1791(b).

278. ~~77.~~ All California State Class members who leased Class Vehicles in California are "lessors" within the meaning of Cal. Civ. Code § 1791(h).

279. ~~78.~~ The Class Vehicles are "consumer goods" within the meaning of Cal. Civ. Code § 1791(a).

280. ~~79.~~ Defendants are "manufacturer[s]" of the Class Vehicles within the meaning of California Civil Code § 1791(j).

281. ~~80.~~ Defendants are and were at all relevant times "sellers" of motor vehicles under Cal. Civ. Code § 1791(l).

282. ~~81.~~ With respect to leases, Defendants are and were at all relevant times "lessors" of motor vehicles under Cal. Civ. Code § 1791(i).

1           283.   ~~82.~~ Defendants made express warranties to members of the California State Class  
2 within the meaning of California Civil Code §§ 1791.2 and 1793.2.

3           284.   ~~83.~~ In connection with the purchase or lease of Class Vehicles, Defendants  
4 provided ~~Plaintiffs~~ Plaintiff and California State Class members with written express warranties  
5 covering the repair or replacement of components that are defective in materials or workmanship.

6           285.   ~~84.~~ Defendants' warranties formed the basis of the bargain that was reached when  
7 ~~Plaintiffs~~ Plaintiff and California State Class members unknowingly purchased or leased their  
8 Class Vehicles equipped with the SDM Calibration Defect.

9           286.   ~~85.~~ However, Defendants knew or should have known that their warranties were  
10 false and misleading. Specifically, Defendants were aware of the SDM Calibration Defect in the  
11 Class Vehicles which made the vehicles inherently defective and dangerous at the time that they  
12 were sold and leased to ~~Plaintiffs~~ Plaintiff and California State Class members.

13           287.   ~~86.~~ ~~Plaintiffs~~ Plaintiff and California State Class members reasonably relied on  
14 Defendants' express warranties when purchasing or leasing the California Class Vehicles.

15           288.   ~~87.~~ Defendants knowingly breached their express warranties to repair defects in  
16 materials and workmanship by failing to repair the SDM Calibration Defect in the Class Vehicles.  
17 Defendants also breached their express warranties by providing a product containing defects that  
18 were never disclosed to ~~Plaintiffs~~ Plaintiff and California State Class members.

19           289.   ~~88.~~ Defendants were on reasonable notice of these issues and an opportunity to cure  
20 the breaches due to their extensive knowledge of the SDM Defect, as detailed herein. ~~Any~~  
21 ~~opportunity to cure the breach is unnecessary and futile.~~ Defendants have not cured the breaches  
22 of their warranties despite years of knowledge of those breaches, as detailed herein.

23           290.   ~~89.~~ As a result of Defendants' breach of their express warranties, members of the  
24 California State Class received goods whose defect substantially impairs their value to Plaintiffs  
25 and the other members of the California State Class. Plaintiffs and members of the California  
26 State Class have been damaged as a result of, inter alia, the diminished value of Defendants'  
27 products.  
28



291. ~~90.~~ Pursuant to California Civil Code §§ 1793.2 & 1794, Plaintiffs and members of the California State Class are entitled to damages and other legal and equitable relief including, at their election, the purchase price of their Class Vehicles, or the overpayment or diminution in value of their Class Vehicles.

292. ~~91.~~ Pursuant to California Civil Code § 1794, the Class is entitled to costs and attorneys' fees.

### ~~5.~~ Colorado

#### **~~COLORADO COUNT I: Violations of the Colorado Consumer Protection Act Colo. Rev. Stat. § 6-1-101 et seq. (On Behalf of the Colorado State Class)~~**

~~1. Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.~~

~~2. Plaintiff Lakiesha Shears (for the purposes of this count, "Plaintiff") brings this claim on behalf of herself and the Colorado State Class against all Defendants.~~

~~3. Defendants are "person[s]" under § 6-1-102(6) of the Colorado Consumer Protection Act "Colorado CPA"), Col. Rev. Stat. § 6-1-101, et seq.~~

~~4. Plaintiff and Colorado State Class members are "consumers" for purposes of Col. Rev. Stat. § 6-1-113(1)(a) who purchased or leased one or more Class Vehicles.~~

~~5. The Colorado CPA prohibits deceptive trade practices in the course of a person's business. Defendants engaged in deceptive trade practices prohibited by the Colorado CPA, including: (1) knowingly making a false representation as to the characteristics, uses, and benefits of the Class Vehicles that had the capacity or tendency to deceive Colorado State Class members; (2) representing that the Class Vehicles are of a particular standard, quality, and grade even though Defendants knew or should have known they are not; (3) advertising the Class Vehicles with the intent not to sell them as advertised; and (4) failing to disclose material information concerning the Class Vehicles that was known to Defendants at the time of advertisement or sale with the intent to induce Colorado State Class members to purchase, lease or retain the Class Vehicles.~~

1           ~~6. In the course of their business, Defendants violated the Colorado CPA by~~  
2           ~~knowingly and intentionally misrepresenting, omitting, concealing, and/or failing to disclose~~  
3           ~~material facts regarding the reliability, safety, and performance of the Class Vehicles, as detailed~~  
4           ~~above.~~

5           ~~7. Specifically, by misrepresenting the Class Vehicles as safe and/or free from~~  
6           ~~defects, and by failing to disclose and actively concealing the dangers and risk posed by the Class~~  
7           ~~Vehicles and/or the SDM Calibration Defect, Defendants engaged in unfair methods of~~  
8           ~~competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the~~  
9           ~~conduct of any trade or commerce, as prohibited by the Colorado CPA.~~

10           ~~8. Defendants' unfair or deceptive acts or practices, including misrepresentations,~~  
11           ~~concealments, omissions, and/or suppressions of material facts, had a tendency or capacity to~~  
12           ~~mislead and create a false impression in consumers, and were likely to and did in fact deceive~~  
13           ~~reasonable consumers, including Plaintiff and Colorado State Class members, about the true~~  
14           ~~safety and reliability of Class Vehicles, the quality of the Class Vehicles, and the true value of the~~  
15           ~~Class Vehicles.~~

16           ~~9. Defendants' scheme and concealment of the SDM Calibration Defect and true~~  
17           ~~characteristics of the passenger safety systems in the Class Vehicles were material to Plaintiff and~~  
18           ~~Colorado State Class members, as the Defendants intended. Had they known the truth, Plaintiff~~  
19           ~~and Colorado State Class members would not have purchased or leased the Class Vehicles, or~~  
20           ~~would have paid significantly less for them.~~

21           ~~10. Plaintiff and Colorado State Class members had no way of discerning that~~  
22           ~~Defendants' representations were false and misleading and/or otherwise learning the facts that~~  
23           ~~Defendants had concealed or failed to disclose. Plaintiff and Colorado State Class members did~~  
24           ~~not, and could not, unravel Defendants' deception on their own.~~

25           ~~11. Defendants had an ongoing duty to Plaintiff and Colorado State Class members to~~  
26           ~~refrain from unfair or deceptive practices under the Colorado CPA in the course of their business.~~  
27           ~~Specifically, Defendants owed Plaintiff and Colorado State Class members a duty to disclose all~~  
28           ~~the material facts concerning the SDM Calibration Defect in the Class Vehicles because they~~

~~possessed exclusive knowledge, they intentionally concealed the defect from Plaintiff and Colorado State Class members, and/or they made misrepresentations that were misleading because they were contradicted by withheld facts.~~

~~12.—Defendants’ violations present a continuing risk to the Colorado State Class as well as to the general public. Defendants’ unlawful acts and practices complained of herein affect the public interest.~~

~~13.—Plaintiff and the Colorado State Class suffered ascertainable loss and actual damages as a direct and proximate result of Defendants’ misrepresentations and concealment of and failure to disclose material information. Defendants had an ongoing duty to all their customers to refrain from unfair and deceptive practices under the Colorado CPA. All owners and lessees of Class Vehicles suffered ascertainable loss as a result of Defendants’ deceptive and unfair acts and practices made in the course of Defendants’ business.~~

**COLORADO COUNT II:  
Breach of Express Warranty  
Colo. Rev. Stat. §§ 4-2-313 and 4-2.5-210  
(On Behalf of the Colorado State Class)**

~~14.—Plaintiffs re-allege and incorporate by reference all preceding allegations as though fully set forth herein.~~

~~15.—Plaintiff Lakiesha Shears (for the purposes of this count, “Plaintiff”) brings this claim on behalf of herself and the Colorado State Class against all Defendants.~~

~~16.—Defendants are and were at all relevant times “merchant[s]” with respect to motor vehicles under Colo. Rev. Stat. §§ 4-2-104(1) and 4-2.5-103(3), and “sellers” of motor vehicles under § 4-2-103(1)(d).~~

~~17.—With respect to leases, Defendants are and were at all relevant times “lessors” of motor vehicles under Colo. Rev. Stat. § 4-2.5-103(1)(p).~~

~~18.—The Class Vehicles are and were at all relevant times “goods” within the meaning of Colo. Rev. Stat. §§ 4-2-105(1) and 4-2.5-103(1)(h).~~

1           ~~19.—In connection with the purchase or lease of Class Vehicles, Defendants provided~~  
2           ~~Plaintiff and Colorado State Class members with written express warranties covering the repair or~~  
3           ~~replacement of components that are defective in materials or workmanship.~~

4           ~~20.—Defendants' warranties formed the basis of the bargain that was reached when~~  
5           ~~Plaintiff and Colorado State Class members unknowingly purchased or leased Class Vehicles that~~  
6           ~~came equipped with the SDM Calibration Defect.~~

7           ~~21.—However, Defendants knew or should have known that the warranties were false~~  
8           ~~and/or misleading. Specifically, Defendants were aware of the SDM Calibration Defect in the~~  
9           ~~Class Vehicles, which made the vehicles inherently defective and dangerous at the time that they~~  
10           ~~were sold and leased to Plaintiff and Colorado State Class members.~~

11           ~~22.—Plaintiff and Colorado State Class members reasonably relied on the Defendants'~~  
12           ~~express warranties when purchasing or leasing their Class Vehicles.~~

13           ~~23.—Defendants knowingly breached their express warranties to repair defects in~~  
14           ~~materials and workmanship by failing to repair the SDM Calibration Defect in the Class Vehicles.~~  
15           ~~Defendants also breached their express warranties by providing a product containing defects that~~  
16           ~~were never disclosed to Plaintiff and Colorado State Class members.~~

17           ~~24.—Plaintiff and Colorado State Class members have provided the Defendants with~~  
18           ~~reasonable notice and opportunity to cure the breaches of their express warranties by way of letter~~  
19           ~~sent by Plaintiffs on August 20, 2021. Defendants are further on notice due to numerous public~~  
20           ~~NHTSA complaints and individual lawsuits, as detailed herein.~~

21           ~~25.—Alternatively, any opportunity to cure the breach is unnecessary and futile.~~

22           ~~26.—As a direct and proximate result of the Defendants' breach of express warranties,~~  
23           ~~Plaintiff and Colorado State Class members have been damaged in an amount to be proven at~~  
24           ~~trial.~~

**COLORADO COUNT III:**  
**Breach of Implied Warranty of Merchantability**  
**Colo. Rev. Stat. §§ 4-2-314 and 4-2.5-212**  
**(On Behalf of the Colorado State Class)**

~~27. Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set forth herein.~~

~~28. Plaintiff Lakiesha Shears (for the purposes of this count, “Plaintiff”) brings this claim on behalf of herself and the Colorado State Class against all Defendants.~~

~~29. Defendants are and were at all relevant times “merchant[s]” with respect to motor vehicles under Colo. Rev. Stat. §§ 4-2-104(1) and 4-2.5-103(3), and “sellers” of motor vehicles under § 4-2-103(1)(d).~~

~~30. With respect to leases, Defendants are and were at all relevant times “lessors” of motor vehicles under Colo. Rev. Stat. § 4-2.5-103(1)(p).~~

~~31. The Class Vehicles are and were at all relevant times “goods” within the meaning of Colo. Rev. Stat. §§ 4-2-105(1) and 4-2.5-103(1)(h).~~

~~32. A warranty that the Class Vehicles were in merchantable condition and fit for the ordinary purpose for which vehicles are used is implied by law pursuant to Colo. Rev. Stat. §§ 4-2-313 and 4-2.5-212.~~

~~33. The Class Vehicles did not comply with the implied warranty of merchantability because, at the time of sale and at all times thereafter, they were defective and not in merchantable condition, would not pass without objection in the trade, and were not fit for the ordinary purpose for which vehicles were used. Specifically, the Class Vehicles suffer from the SDM Calibration Defect, which may cause the airbags and seatbelt to fail to deploy during an accident, rendering the Class Vehicles inherently defective and dangerous.~~

~~34. Defendants were provided reasonable notice of these issues by way of a letter sent by Plaintiffs on August 20, 2021, as well as numerous public NHTSA complaints and individual lawsuits, as detailed herein.~~

~~35. Alternatively, any opportunity to cure the breach is unnecessary and futile.~~

36. ~~As a direct and proximate result of Defendants' breach of the implied warranty of merchantability, Plaintiff and Colorado State Class members have been damaged in an amount to be proven at trial.~~

**6. Delaware**

**DELAWARE COUNT I:  
Violations of the Delaware Consumer Fraud Act  
6 Del. Code § 2513 *et seq.*  
(On Behalf of the Delaware State Class)**

1. ~~Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.~~

2. ~~Plaintiff Christina Colatriano (for the purposes of this count, "Plaintiff") brings this claim on behalf of herself and the Delaware State Class against all Defendants.~~

3. ~~Defendants are "person[s]" within the meaning of 6 Del. Code § 2511(7).~~

4. ~~The Delaware Consumer Fraud Act ("Delaware CFA") prohibits the "act, use or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, or the concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale, lease or advertisement of any merchandise, whether or not any person has in fact been misled, deceived or damaged thereby." 6 Del. Code § 2513(a).~~

5. ~~In the course of their business, Defendants violated the Delaware CFA by knowingly and intentionally misrepresenting, omitting, concealing, and/or failing to disclose material facts regarding the reliability, safety, and performance of the Class Vehicles, as detailed above.~~

6. ~~Specifically, by misrepresenting the Class Vehicles as safe and/or free from defects, and by failing to disclose and actively concealing the dangers and risk posed by the Class Vehicles and/or the SDM Calibration Defect, Defendants engaged in unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce, as prohibited by 6 Del. Code § 2513(a).~~

7. ~~Defendants' unfair or deceptive acts or practices, including misrepresentations, concealments, omissions, and/or suppressions of material facts, had a tendency or capacity to~~

1 ~~mislead and create a false impression in consumers, and were likely to and did in fact deceive~~  
2 ~~reasonable consumers, including Plaintiff and Delaware State Class members, about the true~~  
3 ~~safety and reliability of Class Vehicles, the quality of the Class Vehicles, and the true value of the~~  
4 ~~Class Vehicles.~~

5 ~~8. Defendants' scheme and concealment of the SDM Calibration Defect and true~~  
6 ~~characteristics of the passenger safety systems in the Class Vehicles were material to Plaintiff and~~  
7 ~~Delaware State Class members, as the Defendants intended. Had they known the truth, Plaintiffs~~  
8 ~~and Delaware State Class members would not have purchased or leased the Class Vehicles, or~~  
9 ~~would have paid significantly less for them.~~

10 ~~9. Plaintiff and Delaware State Class members had no way of discerning that~~  
11 ~~Defendants' representations were false and misleading and/or otherwise learning the facts that~~  
12 ~~Defendants had concealed or failed to disclose. Plaintiff and Delaware State Class members did~~  
13 ~~not, and could not, unravel Defendants' deception on their own.~~

14 ~~10. Defendants had an ongoing duty to Plaintiff and Delaware State Class members to~~  
15 ~~refrain from unfair or deceptive practices under the Delaware CFA in the course of their business.~~  
16 ~~Specifically, Defendants owed Plaintiffs and Delaware State Class members a duty to disclose all~~  
17 ~~the material facts concerning the SDM Calibration Defect in the Class Vehicles because they~~  
18 ~~possessed exclusive knowledge, they intentionally concealed the defect from Plaintiff and~~  
19 ~~Delaware State Class members, and/or they made misrepresentations that were misleading~~  
20 ~~because they were contradicted by withheld facts.~~

21 ~~11. Defendants' violations present a continuing risk to the Delaware Class as well as~~  
22 ~~to the general public. Defendants' unlawful acts and practices complained of herein affect the~~  
23 ~~public interest.~~

24 ~~12. The Delaware State Class suffered ascertainable loss and actual damages as a~~  
25 ~~direct and proximate result of Defendants' misrepresentations and concealment of and failure to~~  
26 ~~disclose material information. Defendants had an ongoing duty to all their customers to refrain~~  
27 ~~from unfair and deceptive practices under the Delaware CFA. All owners of Class Vehicles~~  
28



~~suffered ascertainable loss as a result of Defendants' deceptive and unfair acts and practices made in the course of Defendants' business.~~

~~13.—As a direct and proximate result of Defendants' violations of the Delaware CFA, the Delaware State Class have suffered injury in fact and/or actual damage.~~

~~14.—The Delaware State Class seeks damages under the Delaware CFA for injury resulting from the direct and natural consequences of Defendants' unlawful conduct. See, e.g., *Stephenson v. Capano Dev., Inc.*, 462 A.2d 1069, 1077 (Del. 1983). The Delaware State Class also seeks an order enjoining Defendants' unfair, unlawful, and/or deceptive practices, declaratory relief, attorneys' fees, and any other just and proper relief available under the Delaware CFA.~~

~~15.—Defendants engaged in gross, oppressive or aggravated conduct justifying the imposition of punitive damages.~~

**DELAWARE COUNT II:  
Breach of Express Warranty  
6 Del. Code §§ 2-313 and 2A-210  
(On Behalf of the Delaware State Class)**

~~16.—Plaintiffs re-allege and incorporate by reference all preceding allegations as though fully set forth herein.~~

~~17.—Plaintiff Christina Colatrisano (for the purposes of this count, "Plaintiff") brings this claim on behalf of herself and the Delaware State Class against all Defendants.~~

~~18.—Defendants are and were at all relevant times "merchant[s]" with respect to motor vehicles under 6 Del. C. §§ 2-104(1) and 2A-103(3), and "sellers" of motor vehicles under § 2-103(1)(d).~~

~~19.—With respect to leases, Defendants are and were at all relevant times "lessors" of motor vehicles under 6 Del. C. § 2A-103(1)(p).~~

~~20.—The Class Vehicles are and were at all relevant times "goods" within the meaning of 6 Del. C. §§ 2-105(1) and 2A-103(1)(h).~~

1           ~~21.—In connection with the purchase or lease of Class Vehicles, Defendants provided~~  
2 ~~Plaintiff and Delaware State Class members with written express warranties covering the repair or~~  
3 ~~replacement of components that are defective in materials or workmanship.~~

4           ~~22.—Defendants' warranties formed the basis of the bargain that was reached when~~  
5 ~~Plaintiff and Delaware State Class members unknowingly purchased or leased Class Vehicles that~~  
6 ~~came equipped with the SDM Calibration Defect.~~

7           ~~23.—However, Defendants knew or should have known that the warranties were false~~  
8 ~~and/or misleading. Specifically, Defendants were aware of the SDM Calibration Defect in the~~  
9 ~~Class Vehicles, which made the vehicles inherently defective and dangerous at the time that they~~  
10 ~~were sold and leased to Plaintiff and Delaware State Class members.~~

11           ~~24.—Plaintiff and Delaware State Class members reasonably relied on the Defendants'~~  
12 ~~express warranties when purchasing or leasing their Class Vehicles.~~

13           ~~25.—Defendants knowingly breached their express warranties to repair defects in~~  
14 ~~materials and workmanship by failing to repair the SDM Calibration Defect in the Class Vehicles.~~  
15 ~~Defendants also breached their express warranties by providing a product containing defects that~~  
16 ~~were never disclosed to Plaintiffs and Delaware State Class members.~~

17           ~~26.—Plaintiff and Delaware State Class members have provided the Defendants with~~  
18 ~~reasonable notice and opportunity to cure the breaches of their express warranties by way of letter~~  
19 ~~sent by Plaintiffs on August 20, 2021. Defendants are further on notice due to numerous public~~  
20 ~~NHTSA complaints and individual lawsuits, as detailed herein.~~

21           ~~27.—Alternatively, any opportunity to cure the breach is unnecessary and futile.~~

22           ~~28.—As a direct and proximate result of the Defendants' breach of express warranties,~~  
23 ~~Plaintiff and Delaware State Class members have been damaged in an amount to be proven at~~  
24 ~~trial.~~

**DELAWARE COUNT III:**  
**Breach of Implied Warranty of Merchantability**  
**6 Del. Code §§ 2-314 and 7-2A-212**  
**(On Behalf of the Delaware State Class)**

~~29. Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set forth herein.~~

~~30. Plaintiff Christina Colatriano (for the purposes of this count, “Plaintiff”) brings this claim on behalf of herself and the Delaware State Class against all Defendants.~~

~~31. Defendants are and were at all relevant times “merchant[s]” with respect to motor vehicles under 6 Del. C. §§ 2-104(1) and 2A-103(3), and “sellers” of motor vehicles under § 2-103(1)(d).~~

~~32. With respect to leases, Defendants are and were at all relevant times “lessors” of motor vehicles under 6 Del. C. § 2A-103(1)(p).~~

~~33. The Class Vehicles are and were at all relevant times “goods” within the meaning of 6 Del. C. §§ 2-105(1) and 2A-103(1)(h).~~

~~34. A warranty that the Class Vehicles were in merchantable condition and fit for the ordinary purpose for which vehicles are used is implied by law pursuant to 6 Del. C. §§ 2-314 and 2A-212.~~

~~35. The Class Vehicles did not comply with the implied warranty of merchantability because, at the time of sale and at all times thereafter, they were defective and not in merchantable condition, would not pass without objection in the trade, and were not fit for the ordinary purpose for which vehicles were used. Specifically, the Class Vehicles suffer from the SDM Calibration Defect, which may cause the airbags and seatbelt to fail to deploy during an accident, rendering the Class Vehicles inherently defective and dangerous.~~

~~36. Defendants were provided reasonable notice of these issues by way of a letter sent by Plaintiffs on August 20, 2021, as well as numerous public NHTSA complaints and individual lawsuits, as detailed herein.~~

~~37. Alternatively, any opportunity to cure the breach is unnecessary and futile.~~

~~38. As a direct and proximate result of Defendants' breach of the implied warranty of merchantability, Plaintiffs and Delaware State Class members have been damaged in an amount to be proven at trial.~~

~~7. Florida~~

~~**FLORIDA COUNT I:  
Violations of the Florida Unfair & Deceptive Trade Practices Act  
Fla. Stat. § 501.201, et seq.  
(On Behalf of the Florida State Class)**~~

~~1. Plaintiffs reallege and incorporate by reference all preceding allegations as though fully set forth herein.~~

~~2. Plaintiffs Toni Lowe, Clarise Knight, and William Free (for the purposes of this count, "Plaintiffs") bring this claim on behalf of themselves and the Florida State Class against all Defendants.~~

~~3. Plaintiffs and members of the Florida State Class are "consumers" within the meaning of the Florida Unfair and Deceptive Trade Practices Act ("FUDTPA"), Fla. Stat. § 501.203(7).~~

~~4. Defendants engaged in "trade or commerce" within the meaning of Fla. Stat. § 501.203(8).~~

~~5. FUDTPA prohibits "[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce..." Fla. Stat. § 501.204(1). Defendants participated in unfair and deceptive trade practices that violated the FUDTPA as described herein.~~

~~6. In the course of their business, Defendants violated the FUDTPA by knowingly and intentionally misrepresenting, omitting, concealing, and/or failing to disclose material facts regarding the reliability, safety, and performance of the Class Vehicles, as detailed above.~~

~~7. Specifically, by misrepresenting the Class Vehicles as safe and/or free from defects, and by failing to disclose and actively concealing the dangers and risk posed by the Class Vehicles and/or the SDM Calibration Defect, Defendants engaged in unfair methods of~~

1 ~~competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the~~  
2 ~~conduct of any trade or commerce, as prohibited by Fla. Stat. § 501.204(1).~~

3 ~~8.——Defendants’ unfair or deceptive acts or practices, including misrepresentations,~~  
4 ~~concealments, omissions, and/or suppressions of material facts, had a tendency or capacity to~~  
5 ~~mislead and create a false impression in consumers, and were likely to and did in fact deceive~~  
6 ~~reasonable consumers, including Plaintiffs and Florida State Class members, about the true safety~~  
7 ~~and reliability of Class Vehicles, the quality of the Class Vehicles, and the true value of the Class~~  
8 ~~Vehicles.~~

9 ~~9.——Defendants’ scheme and concealment of the SDM Calibration Defect and true~~  
10 ~~characteristics of the passenger safety systems in the Class Vehicles were material to Plaintiffs~~  
11 ~~and Florida State Class members, as the Defendants intended. Had they known the truth,~~  
12 ~~Plaintiffs and Florida State Class members would not have purchased or leased the Class~~  
13 ~~Vehicles, or would have paid significantly less for them.~~

14 ~~10.——Plaintiffs and Florida State Class members had no way of discerning that~~  
15 ~~Defendants’ representations were false and misleading and/or otherwise learning the facts that~~  
16 ~~Defendants had concealed or failed to disclose. Plaintiffs and Florida State Class members did~~  
17 ~~not, and could not, unravel Defendants’ deception on their own.~~

18 ~~11.——Defendants had an ongoing duty to Plaintiffs and Florida State Class members to~~  
19 ~~refrain from unfair or deceptive practices under the FUDTPA in the course of their business.~~  
20 ~~Specifically, Defendants owed Plaintiffs and Florida State Class members a duty to disclose all~~  
21 ~~the material facts concerning the SDM Calibration Defect in the Class Vehicles because they~~  
22 ~~possessed exclusive knowledge, they intentionally concealed the defect from Plaintiffs and~~  
23 ~~Florida State Class members, and/or they made misrepresentations that were misleading because~~  
24 ~~they were contradicted by withheld facts.~~

25 ~~12.——Defendants’ violations present a continuing risk to Plaintiffs and Florida State~~  
26 ~~Class members, as well as to the general public. Defendants’ unlawful acts and practices~~  
27 ~~complained of herein affect the public interest.~~

~~13. Pursuant to Fla. Stat. § 501.211, Plaintiffs and Florida State Class members seek an order enjoining Defendants' unfair or deceptive acts or practices and awarding damages and any other just and proper relief available under the FUDTPA.~~

~~14. Plaintiffs and the Florida State Class suffered ascertainable loss and actual damages as a direct and proximate result of Defendants' misrepresentations and concealment of and failure to disclose material information.~~

~~15. Plaintiffs and the Florida State Class are entitled to recover their actual damages under Fla. Stat. § 501.211(2) and attorneys' fees under Fla. Stat. § 501.2105(1).~~

~~16. Plaintiffs and the Florida State Class also seek an order enjoining Defendants' unfair, unlawful, and/or deceptive practices, declaratory relief, attorneys' fees, and any other just and proper relief available under the FUDTPA.~~

**FLORIDA COUNT II:  
Breach of Express Warranty  
Fla. Stat. §§ 672.313 and 680.21  
(On Behalf of the Florida State Class)**

~~17. Plaintiffs reallege and incorporate by reference all preceding allegations as though fully set forth herein.~~

~~18. Plaintiffs Toni Lowe, Clarise Knight, and William Free (for the purposes of this count, "Plaintiffs") bring this claim on behalf of themselves and the Florida State Class against all Defendants.~~

~~19. Defendants are and were at all relevant times "merchant[s]" with respect to motor vehicles under Fla. Stat. §§ 672.104(1) and 680.1031(3)(k), and a "seller" of motor vehicles under § 672.103(1)(d).~~

~~20. With respect to leases, Defendants are and were at all relevant times "lessors" of motor vehicles under Fla. Stat. § 680.1031(1)(p).~~

~~21. All Florida State Class members who purchased Class Vehicles in Florida are "buyers" within the meaning of Fla. Stat. §§ 672.103(1)(a).~~

~~22. All Florida State Class members who leased Class Vehicles in Florida are "lessees" within the meaning of Fla. Stat. § 680.1031(1)(n).~~

1           ~~23.—The Class Vehicles are and were at all relevant times “goods” within the meaning~~  
2           ~~of Fla. Stat. §§ 672.105(1) and 680.1031(1)(h).~~

3           ~~24.—In connection with the purchase or lease of Class Vehicles, Defendants provided~~  
4           ~~Plaintiffs and Florida State Class members with written express warranties covering the repair or~~  
5           ~~replacement of components that are defective in materials or workmanship.~~

6           ~~25.—Defendants’ warranties formed the basis of the bargain that was reached when~~  
7           ~~Plaintiffs and Florida State Class members unknowingly purchased or leased Class Vehicles that~~  
8           ~~came equipped with the SDM Calibration Defect.~~

9           ~~26.—However, Defendants knew or should have known that the warranties were false~~  
10           ~~and/or misleading. Specifically, Defendants were aware of the SDM Calibration Defect in the~~  
11           ~~Class Vehicles, which made the vehicles inherently defective and dangerous at the time that they~~  
12           ~~were sold and leased to Plaintiffs and Florida State Class members.~~

13           ~~27.—Plaintiffs and Florida State Class members reasonably relied on the Defendants’~~  
14           ~~express warranties when purchasing or leasing their Class Vehicles.~~

15           ~~28.—Defendants knowingly breached their express warranties to repair defects in~~  
16           ~~materials and workmanship by failing to repair the SDM Calibration Defect in the Class Vehicles.~~  
17           ~~Defendants also breached their express warranties by providing a product containing defects that~~  
18           ~~were never disclosed to Plaintiffs and Florida State Class members.~~

19           ~~29.—Plaintiffs and Florida State Class members have provided the Defendants with~~  
20           ~~reasonable notice and opportunity to cure the breaches of their express warranties by way of letter~~  
21           ~~sent by Plaintiffs on August 20, 2021, as well as numerous public NHTSA complaints and~~  
22           ~~individual lawsuits, as detailed herein.~~

23           ~~30.—Alternatively, any opportunity to cure the breach is unnecessary and futile.~~

24           ~~31.—As a direct and proximate result of the Defendants’ breach of express warranties,~~  
25           ~~Plaintiffs and Florida State Class members have been damaged in an amount to be proven at trial.~~



**~~FLORIDA COUNT III:~~**  
**~~Breach of Implied Warranty of Merchantability~~**  
**~~Fla. Stat. §§ 672.314 and 680.212~~**  
**~~(On Behalf of the Florida State Class)~~**

~~32. Plaintiffs reallege and incorporate by reference all preceding allegations as though fully set forth herein.~~

~~33. Plaintiffs Toni Lowe, Clarise Knight, and William Free (for the purposes of this count, “Plaintiffs”) bring this claim on behalf of themselves and the Florida State Class against all Defendants.~~

~~34. Defendants are and were at all relevant times “merchant[s]” with respect to motor vehicles under Fla. Stat. §§ 672.104(1) and 680.1031(3)(k), and a “seller” of motor vehicles under § 672.103(1)(d).~~

~~35. With respect to leases, Defendants are and were at all relevant times “lessors” of motor vehicles under Fla. Stat. § 680.1031(1)(p).~~

~~36. All Florida State Class members who purchased Class Vehicles in Florida are “buyers” within the meaning of Fla. Stat. §§ 672.103(1)(a).~~

~~37. All Florida State Class members who leased Class Vehicles in Florida are “lessees” within the meaning of Fla. Stat. § 680.1031(1)(n).~~

~~38. The Class Vehicles are and were at all relevant times “goods” within the meaning of Fla. Stat. §§ 672.105(1) and 680.1031(1)(h).~~

~~39. A warranty that the Class Vehicles were in merchantable condition and fit for the ordinary purpose for which vehicles are used is implied by law pursuant to Fla. Stat. §§ 672.314 and 680.212.~~

~~40. The Class Vehicles did not comply with the implied warranty of merchantability because, at the time of sale and at all times thereafter, they were defective and not in merchantable condition, would not pass without objection in the trade, and were not fit for the ordinary purpose for which vehicles were used. Specifically, the Class Vehicles suffer from the SDM Calibration Defect, which may cause the airbags and seatbelt to fail to deploy during an accident, rendering the Class Vehicles inherently defective and dangerous.~~

41. ~~Defendants were provided reasonable notice of these issues by way of a letter sent by Plaintiffs on August 20, 2021. Defendants are further on notice due to numerous public NHTSA complaints and individual lawsuits, as detailed herein.~~

42. ~~Alternatively, any opportunity to cure the breach is unnecessary and futile.~~

43. ~~As a direct and proximate result of Defendants' breach of the implied warranty of merchantability, Plaintiffs and Florida State Class members have been damaged in an amount to be proven at trial.~~

## **8. Georgia**

### **GEORGIA COUNT I: Violations of Georgia's Fair Business Practices Act Ga. Code Ann. § 10-1-390 *et seq.* (On Behalf of the Georgia State Class)**

1. ~~Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.~~

2. ~~Plaintiffs Eloise Ackiss, Joseph Sweat, Ed Driggers, Jr., and Larry Swafford (for the purposes of this count, "Plaintiffs") bring this claim on behalf of themselves and the Georgia State Class against all Defendants.~~

3. ~~The Georgia Fair Business Practices Act ("Georgia FBPA") declares "[u]nfair or deceptive acts or practices in the conduct of consumer transactions and consumer acts or practices in trade or commerce" to be unlawful, Ga. Code. Ann. § 10-1-393(a), including but not limited to "representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have," "[r]epresenting that goods or services are of a particular standard, quality, or grade . . . if they are of another," and "[a]dvertising goods or services with intent not to sell them as advertised," Ga. Code. Ann. § 10-1-393(b).~~

4. ~~In the course of their business, Defendants violated the Georgia FBPA by knowingly and intentionally misrepresenting, omitting, concealing, and/or failing to disclose material facts regarding the reliability, safety, and performance of the Class Vehicles, as detailed above.~~

5. ~~Specifically, by misrepresenting the Class Vehicles as safe and/or free from defects, and by failing to disclose and actively concealing the dangers and risk posed by the Class~~

~~Vehicles and/or the SDM Calibration Defect, Defendants engaged in unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce, as prohibited by Ga. Code Ann. § 10-1-393(b).~~

~~6.——Defendants’ unfair or deceptive acts or practices, including misrepresentations, concealments, omissions, and/or suppressions of material facts, had a tendency or capacity to mislead and create a false impression in consumers, and were likely to and did in fact deceive reasonable consumers, including Plaintiffs and Georgia State Class members, about the true safety and reliability of Class Vehicles, the quality of the Class Vehicles, and the true value of the Class Vehicles.~~

~~7.——Defendants’ scheme and concealment of the SDM Calibration Defect and true characteristics of the passenger safety systems in the Class Vehicles were material to Plaintiffs and Georgia State Class members, as the Defendants intended. Had they known the truth, Plaintiffs and Georgia State Class members would not have purchased or leased the Class Vehicles, or would have paid significantly less for them.~~

~~8.——Plaintiffs and Georgia State Class members had no way of discerning that Defendants’ representations were false and misleading and/or otherwise learning the facts that Defendants had concealed or failed to disclose. Plaintiffs and Georgia State Class members did not, and could not, unravel Defendants’ deception on their own.~~

~~9.——Defendants had an ongoing duty to Plaintiffs and Georgia State Class members to refrain from unfair or deceptive practices under the Georgia FBPA in the course of their business. Specifically, Defendants owed Plaintiffs and Georgia State Class members a duty to disclose all the material facts concerning the SDM Calibration Defect in the Class Vehicles because they possessed exclusive knowledge, they intentionally concealed the defect from Plaintiffs and Georgia State Class members, and/or they made misrepresentations that were misleading because they were contradicted by withheld facts.~~

~~10.——Defendants’ violations present a continuing risk to Plaintiffs and Georgia State Class members, as well as to the general public. Defendants’ unlawful acts and practices complained of herein affect the public interest.~~

~~11. As a direct and proximate result of Defendants' violations of the Georgia FBPA, Plaintiffs and the Georgia State Class has suffered injury in fact and/or actual damage.~~

~~12. Plaintiffs and the Georgia State Class are entitled to recover damages and exemplary damages (for intentional violations) per Ga. Code Ann. § 10-1-399(a).~~

~~13. Plaintiffs and the Georgia State Class also seek an order enjoining Defendants' unfair, unlawful, and/or deceptive practices, attorneys' fees, and any other just and proper relief available under the Georgia FBPA per Ga. Code Ann. § 10-1-399.~~

~~14. Pursuant to Ga. Code Ann. § 10-1-399, Plaintiffs sent a notice letter to Defendants. Plaintiffs and the Georgia State Class seek all damages and relief to which it is entitled.~~

**GEORGIA COUNT II:  
Violations of Georgia's Uniform Deceptive Trade Practices Act  
Ga. Code Ann. § 10-1-370 et seq.  
(On Behalf of the Georgia State Class)**

~~15. Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.~~

~~16. Plaintiffs Eloise Ackiss, Joseph Sweat, Ed Driggers, Jr., and Larry Swafford (for the purposes of this count, "Plaintiffs") bring this claim on behalf of themselves and the Georgia State Class against all Defendants.~~

~~17. Defendants, Plaintiffs, and members of the Georgia State Class are "persons" within the meaning of Georgia Uniform Deceptive Trade Practices Act ("Georgia UDTPA"), Ga. Code Ann. § 10-1-371(5).~~

~~18. The Georgia UDTPA prohibits "deceptive trade practices," which include the "misrepresentation of standard or quality of goods or services," and "engaging in any other conduct which similarly creates a likelihood of confusion or of misunderstanding." Ga. Code Ann. § 10-1-372(a).~~

~~19. In the course of their business, Defendants violated the Georgia UDTPA by knowingly and intentionally misrepresenting, omitting, concealing, and/or failing to disclose material facts regarding the reliability, safety, and performance of the Class Vehicles, as detailed above.~~

1           ~~20.—Specifically, by misrepresenting the Class Vehicles as safe and/or free from~~  
2 ~~defects, and by failing to disclose and actively concealing the dangers and risk posed by the Class~~  
3 ~~Vehicles and/or the SDM Calibration Defect, Defendants engaged in unfair methods of~~  
4 ~~competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the~~  
5 ~~conduct of any trade or commerce, as prohibited by the Georgia UDTPA.~~

6           ~~21.—Defendants’ unfair or deceptive acts or practices, including misrepresentations,~~  
7 ~~concealments, omissions, and/or suppressions of material facts, had a tendency or capacity to~~  
8 ~~mislead and create a false impression in consumers, and were likely to and did in fact deceive~~  
9 ~~reasonable consumers, including Plaintiffs and Georgia State Class members, about the true~~  
10 ~~safety and reliability of Class Vehicles, the quality of the Class Vehicles, and the true value of the~~  
11 ~~Class Vehicles.~~

12           ~~22.—Defendants’ scheme and concealment of the SDM Calibration Defect and true~~  
13 ~~characteristics of the passenger safety systems in the Class Vehicles were material to Plaintiffs~~  
14 ~~and Georgia State Class members, as the Defendants intended. Had they known the truth,~~  
15 ~~Plaintiffs and Georgia State Class members would not have purchased or leased the Class~~  
16 ~~Vehicles, or would have paid significantly less for them.~~

17           ~~23.—Plaintiffs and Georgia State Class members had no way of discerning that~~  
18 ~~Defendants’ representations were false and misleading and/or otherwise learning the facts that~~  
19 ~~Defendants had concealed or failed to disclose. Plaintiffs and Georgia State Class members did~~  
20 ~~not, and could not, unravel Defendants’ deception on their own.~~

21           ~~24.—Defendants had an ongoing duty to Plaintiffs and Georgia State Class members to~~  
22 ~~refrain from unfair or deceptive practices under the Georgia UDTPA in the course of their~~  
23 ~~business. Specifically, Defendants owed Plaintiffs and Georgia State Class members a duty to~~  
24 ~~disclose all the material facts concerning the SDM Calibration Defect in the Class Vehicles~~  
25 ~~because they possessed exclusive knowledge, they intentionally concealed the defect from~~  
26 ~~Plaintiffs and Georgia State Class members, and/or they made misrepresentations that were~~  
27 ~~misleading because they were contradicted by withheld facts.~~

~~25.—Defendants’ violations present a continuing risk to Plaintiffs and Georgia State Class members, as well as to the general public. Defendants’ unlawful acts and practices complained of herein affect the public interest.~~

~~26.—As a direct and proximate result of Defendants’ violations of the Georgia UDTPA, Plaintiffs and the Georgia State Class have suffered injury in fact and/or actual damage.~~

~~27.—Plaintiffs and the Georgia State Class seek an order enjoining Defendants’ unfair, unlawful, and/or deceptive practices, attorneys’ fees, and any other just and proper relief available under the Georgia UDTPA per Ga. Code Ann. § 10-1-373.~~

**GEORGIA COUNT III:  
Breach of Express Warranty  
Ga. Code Ann. §§ 11-2-313 and 11-2A-210  
(On Behalf of the Georgia State Class)**

~~28.—Plaintiffs re-allege and incorporate by reference all preceding allegations as though fully set forth herein.~~

~~29.—Plaintiffs Eloise Ackiss, Joseph Sweat, Ed Driggers, Jr., and Larry Swafford (for the purposes of this count, “Plaintiffs”) bring this claim on behalf of themselves and the Georgia State Class against all Defendants.~~

~~30.—Defendants are and were at all relevant times “merchant[s]” with respect to motor vehicles under Ga. Code Ann. §§ 11-2-104(1) and 11-2A-103(3), and a “seller” of motor vehicles under § 11-2-103(1)(d).~~

~~31.—With respect to leases, Defendants are and were at all relevant times “lessors” of motor vehicles under Ga. Code Ann. § 11-2A-103(1)(p).~~

~~32.—The Class Vehicles are and were at all relevant times “goods” within the meaning of Ga. Code Ann. §§ 11-2-105(1) and 11-2A-103(1)(h).~~

~~33.—In connection with the purchase or lease of Class Vehicles, the Defendants provided Plaintiffs and Georgia State Class members with written express warranties covering the repair or replacement of components that are defective in materials or workmanship.~~

34. ~~Defendants' warranties formed the basis of the bargain that was reached when Plaintiffs and Georgia State Class members unknowingly purchased or leased Class Vehicles that came equipped with the SDM Calibration Defect.~~

35. ~~However, Defendants knew or should have known that the warranties were false and/or misleading. Specifically, Defendants were aware of the SDM Calibration Defect in the Class Vehicles, which made the vehicles inherently defective and dangerous at the time that they were sold and leased to Plaintiffs and Georgia State Class members.~~

36. ~~Plaintiffs and Georgia State Class members reasonably relied on the Defendants' express warranties when purchasing or leasing their Class Vehicles.~~

37. ~~Defendants knowingly breached their express warranties to repair defects in materials and workmanship by failing to repair the SDM Calibration Defect in the Class Vehicles. Defendants also breached their express warranties by providing a product containing defects that were never disclosed to Plaintiffs and Georgia State Class members.~~

38. ~~Plaintiffs and Georgia State Class members have provided the Defendants with reasonable notice and opportunity to cure the breaches of their express warranties by way of letter sent by Plaintiffs on August 20, 2021. Defendants are further on notice due to numerous public NHTSA complaints and individual lawsuits, as detailed herein.~~

39. ~~Alternatively, any opportunity to cure the breach is unnecessary and futile.~~

40. ~~As a direct and proximate result of the Defendants' breach of express warranties, Plaintiffs and Georgia State Class members have been damaged in an amount to be proven at trial.~~

**GEORGIA COUNT IV:  
Breach of Implied Warranty of Merchantability  
Ga. Code Ann. §§ 11-2-314 and 11-2A-212  
(On Behalf of the Georgia State Class)**

41. ~~Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set forth herein.~~



1           ~~42.—Plaintiffs Eloise Ackiss, Joseph Sweat, Ed Driggers, Jr., and Larry Swafford for~~  
2 ~~the purposes of this count, “Plaintiffs”)~~ bring this claim on behalf of themselves and the Georgia  
3 ~~State Class against all Defendants.~~

4           ~~43.—Defendants are and were at all relevant times “merchant[s]” with respect to motor~~  
5 ~~vehicles under Ga. Code Ann. §§ 11-2-104(1) and 11-2A-103(3), and a “seller” of motor vehicles~~  
6 ~~under § 11-2-103(1)(d).~~

7           ~~44.—With respect to leases, Defendants are and were at all relevant times “lessors” of~~  
8 ~~motor vehicles under Ga. Code Ann. § 11-2A-103(1)(p).~~

9           ~~45.—The Class Vehicles are and were at all relevant times “goods” within the meaning~~  
10 ~~of Ga. Code Ann. §§ 11-2-105(1) and 11-2A-103(1)(h).~~

11           ~~46.—A warranty that the Class Vehicles were in merchantable condition and fit for the~~  
12 ~~ordinary purpose for which vehicles are used is implied by law pursuant to Ga. Code Ann. §§ 11-~~  
13 ~~2-314 and 11-2A-212.~~

14           ~~47.—The Class Vehicles did not comply with the implied warranty of merchantability~~  
15 ~~because, at the time of sale and at all times thereafter, they were defective and not in~~  
16 ~~merchantable condition, would not pass without objection in the trade, and were not fit for the~~  
17 ~~ordinary purpose for which vehicles were used. Specifically, the Class Vehicles suffer from the~~  
18 ~~SDM Calibration Defect, which may cause the airbags and seatbelt to fail to deploy during an~~  
19 ~~accident, rendering the Class Vehicles inherently defective and dangerous.~~

20           ~~48.—Defendants were provided reasonable notice of these issues by way of a letter sent~~  
21 ~~by Plaintiffs on August 20, 2021, as well as numerous public NHTSA complaints and individual~~  
22 ~~lawsuits, as detailed herein.~~

23           ~~49.—Alternatively, any opportunity to cure the breach is unnecessary and futile.~~

24           ~~50.—As a direct and proximate result of Defendants’ breach of the implied warranty of~~  
25 ~~merchantability, Plaintiffs and Georgia State Class members have been damaged in an amount to~~  
26 ~~be proven at trial.~~

~~9. Idaho~~

**IDAHO COUNT I:  
Violations of the Idaho Consumer Protection Act  
~~Idaho Code Ann. § 48-601, et seq.~~**

~~1. Plaintiffs reallege and incorporate by reference all preceding allegations as though fully set forth herein.~~

~~2. Plaintiffs Michael Merkley and Travis Dieter (for the purposes of this count, “Plaintiffs”) bring this claim on behalf of themselves and the Idaho State Class against all Defendants.~~

~~3. Defendants are “person[s]” under the Idaho Consumer Protection Act (“Idaho CPA”), Idaho Code § 48-602(1).~~

~~4. Defendants’ acts or practices as set forth above occurred in the conduct of “trade” or “commerce” under Idaho Code § 48-602(2).~~

~~5. Defendants participated in misleading, false, or deceptive acts that violated the Idaho CPA.~~

~~6. In the course of their business, Defendants violated the Idaho CPA by knowingly and intentionally misrepresenting, omitting, concealing, and/or failing to disclose material facts regarding the reliability, safety, and performance of the Class Vehicles, as detailed above.~~

~~7. Specifically, by misrepresenting the Class Vehicles as safe and/or free from defects, and by failing to disclose and actively concealing the dangers and risk posed by the Class Vehicles and/or the SDM Calibration Defect, Defendants engaged in unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce, as prohibited by the Idaho CPA.~~

~~8. Defendants’ unfair or deceptive acts or practices, including misrepresentations, concealments, omissions, and/or suppressions of material facts, had a tendency or capacity to mislead and create a false impression in consumers, and were likely to and did in fact deceive reasonable consumers, including Plaintiffs and Idaho State Class members, about the true safety~~

1 ~~and reliability of Class Vehicles, the quality of the Class Vehicles, and the true value of the Class~~  
2 ~~Vehicles.~~

3 ~~9. Defendants' scheme and concealment of the SDM Calibration Defect and true~~  
4 ~~characteristics of the passenger safety systems in the Class Vehicles were material to Plaintiffs~~  
5 ~~and Idaho State Class members, as the Defendants intended. Had they known the truth, Plaintiffs~~  
6 ~~and Idaho State Class members would not have purchased or leased the Class Vehicles, or would~~  
7 ~~have paid significantly less for them.~~

8 ~~10. Plaintiffs and Idaho State Class members had no way of discerning that~~  
9 ~~Defendants' representations were false and misleading and/or otherwise learning the facts that~~  
10 ~~Defendants had concealed or failed to disclose. Plaintiffs and Idaho State Class members did not,~~  
11 ~~and could not, unravel Defendants' deception on their own.~~

12 ~~11. Defendants had an ongoing duty to Plaintiffs and Idaho State Class members to~~  
13 ~~refrain from unfair or deceptive practices under the Idaho CPA in the course of their business.~~  
14 ~~Specifically, Defendants owed Plaintiffs and Idaho State Class members a duty to disclose all the~~  
15 ~~material facts concerning the SDM Calibration Defect in the Class Vehicles because they~~  
16 ~~possessed exclusive knowledge, they intentionally concealed the defect from Plaintiffs and Idaho~~  
17 ~~State Class members, and/or they made misrepresentations that were misleading because they~~  
18 ~~were contradicted by withheld facts.~~

19 ~~12. Defendants' violations present a continuing risk to the Idaho State Class as well as~~  
20 ~~to the general public. Defendants' unlawful acts and practices complained of herein affect the~~  
21 ~~public interest.~~

22 ~~13. The Idaho State Class suffered ascertainable loss and actual damages as a direct~~  
23 ~~and proximate result of Defendants' misrepresentations and concealment of and failure to~~  
24 ~~disclose material information. Defendants had an ongoing duty to all their customers to refrain~~  
25 ~~from unfair and deceptive practices under the Idaho CPA. All owners of Class Vehicles suffered~~  
26 ~~ascertainable loss as a result of Defendants' deceptive and unfair acts and practices made in the~~  
27 ~~course of Defendants' business.~~

14. ~~As a direct and proximate result of Defendants' violations of the Idaho CPA, the Idaho State Class has suffered injury in fact and/or actual damage.~~

15. ~~Pursuant to Idaho Code § 48-608, the Idaho State Class seeks monetary relief against Defendants measured as the greater of (a) actual damages in an amount to be determined at trial and (b) statutory damages in the amount of \$1,000 for each Idaho State Class member.~~

16. ~~The Idaho State Class also seeks an order enjoining Defendants' unfair, unlawful, and/or deceptive practices, attorneys' fees, and any other just and proper relief available under the Idaho CPA.~~

17. ~~The Idaho State Class also seeks punitive damages against Defendants because Defendants conduct evidences an extreme deviation from reasonable standards. Defendants flagrantly and fraudulently misrepresented the reliability of the Class Vehicles, deceived Class members, and concealed material facts that only they knew—all to avoid the expense and public relations nightmare of correcting a flaw in the Class Vehicles. Defendants' unlawful conduct constitutes oppression and fraud warranting punitive damages.~~

**IDAHO COUNT II:  
Breach of Express Warranty  
Idaho Code §§ 28-2-313 and 28-12-210  
(On Behalf of the Idaho State Class)**

18. ~~Plaintiffs re-allege and incorporate by reference all preceding allegations as though fully set forth herein.~~

19. ~~Plaintiffs Michael Merkley and Travis Dieter (for the purposes of this count, "Plaintiffs") bring this claim on behalf of themselves and the Idaho State Class against all Defendants.~~

20. ~~Defendants are and were at all relevant times "merchant[s]" with respect to motor vehicles under Idaho Code §§ 28-2-104(1) and 28-12-103(3), and "sellers" of motor vehicles under § 28-2-103(1)(d).~~

21. ~~With respect to leases, Defendants are and were at all relevant times "lessors" of motor vehicles under Idaho Code § 28-12-103(1)(p).~~

1           ~~22.—The Class Vehicles are and were at all relevant times “goods” within the meaning~~  
2 ~~of Idaho Code §§ 28-2-105(1) and 28-12-103(1)(h).~~

3           ~~23.—In connection with the purchase or lease of Class Vehicles, the Defendants~~  
4 ~~provided Plaintiffs and Idaho State Class members with written express warranties covering the~~  
5 ~~repair or replacement of components that are defective in materials or workmanship.~~

6           ~~24.—Defendants’ warranties formed the basis of the bargain that was reached when~~  
7 ~~Plaintiffs and Idaho State Class members unknowingly purchased or leased Class Vehicles that~~  
8 ~~came equipped with the SDM Calibration Defect.~~

9           ~~25.—However, Defendants knew or should have known that the warranties were false~~  
10 ~~and/or misleading. Specifically, Defendants were aware of the SDM Calibration Defect in the~~  
11 ~~Class Vehicles, which made the vehicles inherently defective and dangerous at the time that they~~  
12 ~~were sold and leased to Plaintiffs and Idaho State Class members.~~

13           ~~26.—Plaintiffs and Idaho State Class members reasonably relied on the Defendants’~~  
14 ~~express warranties when purchasing or leasing their Class Vehicles.~~

15           ~~27.—Defendants knowingly breached their express warranties to repair defects in~~  
16 ~~materials and workmanship by failing to repair the SDM Calibration Defect in the Class Vehicles.~~  
17 ~~Defendants also breached their express warranties by providing a product containing defects that~~  
18 ~~were never disclosed to Plaintiffs and Idaho State Class members.~~

19           ~~28.—Plaintiffs and Idaho State Class members have provided the Defendants with~~  
20 ~~reasonable notice and opportunity to cure the breaches of their express warranties by way of letter~~  
21 ~~sent by Plaintiffs on August 20, 2021. Defendants are further on notice due to numerous public~~  
22 ~~NHTSA complaints and individual lawsuits, as detailed herein.~~

23           ~~29.—Alternatively, any opportunity to cure the breach is unnecessary and futile.~~

24           ~~30.—As a direct and proximate result of the Defendants’ breach of express warranties,~~  
25 ~~Plaintiffs and Idaho State Class members have been damaged in an amount to be proven at trial.~~

**~~IDAHO COUNT III:~~**  
**~~Breach of Implied Warranty of Merchantability~~**  
**~~Idaho Code §§ 28-2-314 and 28-12-212~~**  
**~~(On Behalf of the Idaho State Class)~~**

~~31. Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set forth herein.~~

~~32. Plaintiffs Michael Merkley and Travis Dieter (for the purposes of this count, “Plaintiffs”) bring this claim on behalf of themselves and the Idaho State Class against all Defendants.~~

~~33. Defendants are and were at all relevant times “merchant[s]” with respect to motor vehicles under Idaho Code §§ 28-2-104(1) and 28-12-103(3), and “sellers” of motor vehicles under § 28-2-103(1)(d).~~

~~34. With respect to leases, Defendants are and were at all relevant times “lessors” of motor vehicles under Idaho Code § 28-12-103(1)(p).~~

~~35. The Class Vehicles are and were at all relevant times “goods” within the meaning of Idaho Code §§ 28-2-105(1) and 28-12-103(1)(h).~~

~~36. A warranty that the Class Vehicles were in merchantable condition and fit for the ordinary purpose for which vehicles are used is implied by law pursuant to Idaho Code §§ 28-2-314 and 28-12-212.~~

~~37. The Class Vehicles did not comply with the implied warranty of merchantability because, at the time of sale and at all times thereafter, they were defective and not in merchantable condition, would not pass without objection in the trade, and were not fit for the ordinary purpose for which vehicles were used. Specifically, the Class Vehicles suffer from the SDM Calibration Defect, which may cause the airbags and seatbelt to fail to deploy during an accident, rendering the Class Vehicles inherently defective and dangerous.~~

~~38. Defendants were provided reasonable notice of these issues by way of a letter sent by Plaintiffs on August 20, 2021, as well as numerous public NHTSA complaints and individual lawsuits, as detailed herein.~~

~~39. Alternatively, any opportunity to cure the breach is unnecessary and futile.~~

40. ~~As a direct and proximate result of Defendants' breach of the implied warranty of merchantability, Plaintiffs and Idaho State Class members have been damaged in an amount to be proven at trial.~~

**10. Illinois**

**ILLINOIS COUNT I:**

**~~Violations of the Illinois Consumer Fraud and Deceptive Business Practices Act  
815 ILCS 505/1, et seq. and 720 ILCS 295/1a  
(On Behalf of the Illinois State Class)~~**

1. ~~Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.~~

2. ~~Plaintiffs Angelica Mar, Delbert Dehne, and Randy Holdren (for the purposes of this count, "Plaintiffs") bring this claim on behalf of themselves and the Illinois State Class against all Defendants.~~

3. ~~Defendants are "person[s]" as that term is defined in 815 ILCS 505/1(e).~~

4. ~~Members of the Illinois State Class are "consumers" as that term is defined in 815 ILCS 505/1(e).~~

5. ~~The Illinois Consumer Fraud and Deceptive Business Practices Act ("Illinois CFA") prohibits "unfair or deceptive acts or practices, including but not limited to the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact . . . in the conduct of trade or commerce . . . whether any person has in fact been misled, deceived or damaged thereby." 815 ILCS 505/2.~~

6. ~~In the course of their business, Defendants violated the Illinois CFA by knowingly and intentionally misrepresenting, omitting, concealing, and/or failing to disclose material facts regarding the reliability, safety, and performance of the Class Vehicles, as detailed above.~~

7. ~~Specifically, by misrepresenting the Class Vehicles as safe and/or free from defects, and by failing to disclose and actively concealing the dangers and risk posed by the Class Vehicles and/or the SDM Calibration Defect, Defendants engaged in unfair methods of~~



1 ~~competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the~~  
2 ~~conduct of any trade or commerce, as prohibited by 815 ILCS 505/2.~~

3 ~~8.——Defendants’ unfair or deceptive acts or practices, including misrepresentations,~~  
4 ~~concealments, omissions, and/or suppressions of material facts, had a tendency or capacity to~~  
5 ~~mislead and create a false impression in consumers, and were likely to and did in fact deceive~~  
6 ~~reasonable consumers, including Plaintiffs and Illinois State Class members, about the true safety~~  
7 ~~and reliability of Class Vehicles, the quality of the Class Vehicles, and the true value of the Class~~  
8 ~~Vehicles.~~

9 ~~9.——Defendants’ scheme and concealment of the SDM Calibration Defect and true~~  
10 ~~characteristics of the passenger safety systems in the Class Vehicles were material to Plaintiffs~~  
11 ~~and Illinois State Class members, as the Defendants intended. Had they known the truth, Plaintiffs~~  
12 ~~and Illinois State Class members would not have purchased or leased the Class Vehicles, or~~  
13 ~~would have paid significantly less for them.~~

14 ~~10.——Plaintiffs and Illinois State Class members had no way of discerning that~~  
15 ~~Defendants’ representations were false and misleading and/or otherwise learning the facts that~~  
16 ~~Defendants had concealed or failed to disclose. Plaintiffs and Illinois State Class members did~~  
17 ~~not, and could not, unravel Defendants’ deception on their own.~~

18 ~~11.——Defendants had an ongoing duty to Plaintiffs and Illinois State Class members to~~  
19 ~~refrain from unfair or deceptive practices under the Illinois CFA in the course of their business.~~  
20 ~~Specifically, Defendants owed Plaintiffs and Illinois State Class members a duty to disclose all~~  
21 ~~the material facts concerning the SDM Calibration Defect in the Class Vehicles because they~~  
22 ~~possessed exclusive knowledge, they intentionally concealed the defect from Plaintiffs and~~  
23 ~~Illinois State Class members, and/or they made misrepresentations that were misleading because~~  
24 ~~they were contradicted by withheld facts.~~

25 ~~12.——Defendants’ violations present a continuing risk to Plaintiffs and Illinois State~~  
26 ~~Class members, as well as to the general public. Defendants’ unlawful acts and practices~~  
27 ~~complained of herein affect the public interest.~~

13. ~~Plaintiffs and the Illinois State Class suffered ascertainable loss and actual damages as a direct and proximate result of Defendants' misrepresentations and concealment of and failure to disclose material information Defendants had an ongoing duty to all their customers to refrain from unfair and deceptive practices under the Illinois CFA. All owners of Class Vehicles suffered ascertainable loss as a result of Defendants' deceptive and unfair acts and practices made in the course of Defendants' business.~~

14. ~~As a direct and proximate result of Defendants' violations of the Illinois CFA, Plaintiffs and members of the Illinois State Class have suffered injury in fact and/or actual damage.~~

15. ~~Pursuant to 815 ILCS 505/10a(a), the Illinois State Class seeks monetary relief against Defendants in the amount of actual damages, as well as punitive damages because Defendants acted with fraud and/or malice and/or was grossly negligent.~~

16. ~~Plaintiffs and the Illinois State Class also seek an order enjoining Defendants' unfair and/or deceptive acts or practices, punitive damages, and attorneys' fees, and any other just and proper relief available under 815 ILCS § 505/1 et seq.~~

**ILLINOIS COUNT II:  
Breach of Express Warranty  
810 Ill. Comp. Stat. §§ 5/2-313 and 5/2A-210  
(On Behalf of the Illinois State Class)**

17. ~~Plaintiffs re-allege and incorporate by reference all preceding allegations as though fully set forth herein.~~

18. ~~Plaintiffs Angelica Mar, Delbert Dehne, and Randy Holdren (for the purposes of this count, "Plaintiffs") bring this claim on behalf of themselves and the Illinois State Class against all Defendants.~~

19. ~~Defendants are and were at all relevant times "merchant[s]" with respect to motor vehicles under 810 Ill. Comp. Stat. §§ 5/2-104(1) and 5/2A-103(3), and "sellers" of motor vehicles under § 5/2-103(1)(d).~~

20. ~~With respect to leases, Defendants are and were at all relevant times "lessors" of motor vehicles under 810 Ill. Comp. Stat. § 5/2A-103(1)(p).~~

1           ~~21.—The Class Vehicles are and were at all relevant times “goods” within the meaning~~  
2 ~~of 810 Ill. Comp. Stat. §§ 5/2-105(1) and 5/2A-103(1)(h).~~

3           ~~22.—In connection with the purchase or lease of Class Vehicles, the Defendants~~  
4 ~~provided Plaintiffs and Illinois State Class members with written express warranties covering the~~  
5 ~~repair or replacement of components that are defective in materials or workmanship.~~

6           ~~23.—Defendants’ warranties formed the basis of the bargain that was reached when~~  
7 ~~Plaintiffs and Illinois State Class members unknowingly purchased or leased Class Vehicles that~~  
8 ~~came equipped with the SDM Calibration Defect.~~

9           ~~24.—However, Defendants knew or should have known that the warranties were false~~  
10 ~~and/or misleading. Specifically, Defendants were aware of the SDM Calibration Defect in the~~  
11 ~~Class Vehicles, which made the vehicles inherently defective and dangerous at the time that they~~  
12 ~~were sold and leased to Plaintiffs and Illinois State Class members.~~

13           ~~25.—Plaintiffs and Illinois State Class members reasonably relied on the Defendants’~~  
14 ~~express warranties when purchasing or leasing their Class Vehicles.~~

15           ~~26.—Defendants knowingly breached their express warranties to repair defects in~~  
16 ~~materials and workmanship by failing to repair the SDM Calibration Defect in the Class Vehicles.~~  
17 ~~Defendants also breached their express warranties by providing a product containing defects that~~  
18 ~~were never disclosed to Plaintiffs and Illinois State Class members.~~

19           ~~27.—Plaintiffs and Illinois State Class members have provided the Defendants with~~  
20 ~~reasonable notice and opportunity to cure the breaches of their express warranties by way of letter~~  
21 ~~sent by Plaintiffs on August 20, 2021. Defendants are further on notice due to numerous public~~  
22 ~~NHTSA complaints and individual lawsuits, as detailed herein.~~

23           ~~28.—Alternatively, any opportunity to cure the breach is unnecessary and futile.~~

24           ~~29.—As a direct and proximate result of the Defendants’ breach of express warranties,~~  
25 ~~Plaintiffs and Illinois State Class members have been damaged in an amount to be proven at trial.~~

**ILLINOIS COUNT III:  
Breach of Implied Warranty of Merchantability  
810 Ill. Comp. Stat. §§ 5/2-314 and 5/2A-212  
(On Behalf of the Illinois State Class)**

30.——Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set forth herein.

31.——Plaintiffs Angelica Mar, Delbert Dehne, and Randy Holdren (for the purposes of this count, “Plaintiffs”) bring this claim on behalf of themselves and the Illinois State Class against all Defendants.

32.——Defendants are and were at all relevant times “merchant[s]” with respect to motor vehicles under 810 Ill. Comp. Stat. §§ 5/2-104(1) and 5/2A-103(3), and “sellers” of motor vehicles under § 5/2-103(1)(d).

33.——With respect to leases, Defendants are and were at all relevant times “lessors” of motor vehicles under 810 Ill. Comp. Stat. § 5/2A-103(1)(p).

34.——The Class Vehicles are and were at all relevant times “goods” within the meaning of 810 Ill. Comp. Stat. §§ 5/2-105(1) and 5/2A-103(1)(h).

35.——A warranty that the Class Vehicles were in merchantable condition and fit for the ordinary purpose for which vehicles are used is implied by law pursuant to 810 Ill. Comp. Stat. §§ 28-2-314 and 28-12-212.

36.——The Class Vehicles did not comply with the implied warranty of merchantability because, at the time of sale and at all times thereafter, they were defective and not in merchantable condition, would not pass without objection in the trade, and were not fit for the ordinary purpose for which vehicles were used. Specifically, the Class Vehicles suffer from the SDM Calibration Defect, which may cause the airbags and seatbelt to fail to deploy during an accident, rendering the Class Vehicles inherently defective and dangerous.

37.——Defendants were provided reasonable notice of these issues by way of a letter sent by Plaintiffs on August 20, 2021, as well as numerous public NHTSA complaints and individual lawsuits, as detailed herein.

38.——Alternatively, any opportunity to cure the breach is unnecessary and futile.

~~39. As a direct and proximate result of Defendants' breach of the implied warranty of merchantability, Plaintiffs and Illinois State Class members have been damaged in an amount to be proven at trial.~~

# ~~11. Indiana~~

## ~~INDIANA COUNT I: Violations of the Indiana Deceptive Consumer Sales Act Ind. Code § 24-5-0.5-3 (On Behalf of the Indiana State Class)~~

~~1. Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.~~

~~2. Plaintiffs Warren Whitsey, David James, and Jerome Blatt (for the purposes of this count, "Plaintiffs") bring this claim on behalf of themselves and the Indiana State Class against all Defendants.~~

~~3. Defendants are "suppliers" within the meaning of Ind. Code § 24-5-0.5-2(a)(3).~~

~~4. Defendants, Plaintiffs, and the Indiana State Class members are "persons" within the meaning of Ind. Code § 24-5-0.5-2(a)(2).~~

~~5. Defendants were and are engaged in "consumer transactions" within the meaning of Ind. Code § 24-5-0.5-2(a)(1).~~

~~6. The Indiana Deceptive Consumer Sales Act ("Indiana DCSA") prohibits a supplier from committing an "unfair, abusive, or deceptive act, omission, or practice in connection with a consumer transaction." Ind. Code § 24-5-0.5-3(a).~~

~~7. In the course of their business, Defendants violated the Indiana DCSA by knowingly and intentionally misrepresenting, omitting, concealing, and/or failing to disclose material facts regarding the reliability, safety, and performance of the Class Vehicles, as detailed above.~~

~~8. Specifically, by misrepresenting the Class Vehicles as safe and/or free from defects, and by failing to disclose and actively concealing the dangers and risk posed by the Class Vehicles and/or the SDM Calibration Defect, Defendants engaged in unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce, as prohibited by Ind. Code § 24-5-0.5-3(a).~~

1           9. ~~Defendants' unfair or deceptive acts or practices, including misrepresentations,~~  
 2 ~~concealments, omissions, and/or suppressions of material facts, had a tendency or capacity to~~  
 3 ~~mislead and create a false impression in consumers, and were likely to and did in fact deceive~~  
 4 ~~reasonable consumers, including Plaintiffs and Indiana State Class members, about the true safety~~  
 5 ~~and reliability of Class Vehicles, the quality of the Class Vehicles, and the true value of the Class~~  
 6 ~~Vehicles.~~

7           10. ~~Defendants' scheme and concealment of the SDM Calibration Defect and true~~  
 8 ~~characteristics of the passenger safety systems in the Class Vehicles were material to Plaintiffs~~  
 9 ~~and Indiana State Class members, as the Defendants intended. Had they known the truth,~~  
 10 ~~Plaintiffs and Indiana State Class members would not have purchased or leased the Class~~  
 11 ~~Vehicles, or would have paid significantly less for them.~~

12           11. ~~Plaintiffs and Indiana State Class members had no way of discerning that~~  
 13 ~~Defendants' representations were false and misleading and/or otherwise learning the facts that~~  
 14 ~~Defendants had concealed or failed to disclose. Plaintiffs and Indiana State Class members did~~  
 15 ~~not, and could not, unravel Defendants' deception on their own.~~

16           12. ~~Defendants had an ongoing duty to Plaintiffs and Indiana State Class members to~~  
 17 ~~refrain from unfair or deceptive practices under the Indiana DCSA in the course of their business.~~  
 18 ~~Specifically, Defendants owed Plaintiffs and Indiana State Class members a duty to disclose all~~  
 19 ~~the material facts concerning the SDM Calibration Defect in the Class Vehicles because they~~  
 20 ~~possessed exclusive knowledge, they intentionally concealed the defect from Plaintiffs and~~  
 21 ~~Indiana State Class members, and/or they made misrepresentations that were misleading because~~  
 22 ~~they were contradicted by withheld facts.~~

23           13. ~~Plaintiffs and the Indiana State Class suffered ascertainable loss and actual~~  
 24 ~~damages as a direct and proximate result of Defendants' misrepresentations and concealment of~~  
 25 ~~and failure to disclose material information.~~

26           14. ~~Pursuant to Ind. Code § 24-5-0.5-4, the Indiana State Class seeks monetary relief~~  
 27 ~~against Defendants measured as the greater of (a) actual damages in an amount to be determined~~  
 28

~~at trial and (b) statutory damages in the amount of \$500 for each Indiana State Class member, including treble damages up to \$1,000 for Defendants' willfully deceptive acts.~~

~~15.—The Indiana State Class also seeks punitive damages based on the outrageousness and recklessness of the Defendants' conduct and Defendants' high net worth.~~

~~16.—Pursuant to Ind. Code § 24-5-0.5-5(a), Plaintiffs sent notice letters to Defendants. The Indiana State Class seeks all damages and relief to which it is entitled.~~

**INDIANA COUNT II:  
Breach of Express Warranty  
Ind. Code §§ 26-1-3-313 and 26-1-2.1-210  
(On Behalf of the Indiana State Class)**

~~17.—Plaintiffs re-allege and incorporate by reference all preceding allegations as though fully set forth herein.~~

~~18.—Plaintiffs Warren Whitsey, David James, and Jerome Blatt (for the purposes of this count, "Plaintiffs") bring this claim on behalf of themselves and the Indiana State Class against all Defendants.~~

~~19.—Defendants are and were at all relevant times "merchant[s]" with respect to motor vehicles under Ind. Code §§ 26-1-2-104(1) and 26-1-2.1-103(3), and "sellers" of motor vehicles under § 26-1-2-103(1)(d).~~

~~20.—With respect to leases, Defendants are and were at all relevant times "lessors" of motor vehicles under Ind. Code § 26-1-2.1-103(1)(p).~~

~~21.—The Class Vehicles are and were at all relevant times "goods" within the meaning of Ind. Code §§ 26-1-2-105(1) and 26-1-2.1-103(1)(h).~~

~~22.—In connection with the purchase or lease of Class Vehicles, the Defendants provided Plaintiffs and Indiana State Class members with written express warranties covering the repair or replacement of components that are defective in materials or workmanship.~~

~~23.—Defendants' warranties formed the basis of the bargain that was reached when Plaintiffs and Pennsylvania State Class members unknowingly purchased or leased Class Vehicles that came equipped with the SDM Calibration Defect.~~



24. — However, Defendants knew or should have known that the warranties were false and/or misleading. Specifically, Defendants were aware of the SDM Calibration Defect in the Class Vehicles, which made the vehicles inherently defective and dangerous at the time that they were sold and leased to Plaintiffs and Indiana State Class members.

25. — Plaintiffs and Indiana State Class members reasonably relied on the Defendants' express warranties when purchasing or leasing their Class Vehicles.

26. — Defendants knowingly breached their express warranties to repair defects in materials and workmanship by failing to repair the SDM Calibration Defect in the Class Vehicles. Defendants also breached their express warranties by providing a product containing defects that were never disclosed to Plaintiffs and Indiana State Class members.

27. — Plaintiffs and Indiana State Class members have provided the Defendants with reasonable notice and opportunity to cure the breaches of their express warranties by way of letter sent by Plaintiffs on August 20, 2021. Defendants are further on notice due to numerous public NHTSA complaints and individual lawsuits, as detailed herein.

28. — Alternatively, any opportunity to cure the breach is unnecessary and futile.

29. — As a direct and proximate result of the Defendants' breach of express warranties, Plaintiffs and Indiana State Class members have been damaged in an amount to be proven at trial.

**INDIANA COUNT III:  
Breach of Implied Warranty of Merchantability  
Ind. Code §§ 26-1-3-314 and 26-1-2.1-212  
(On Behalf of the Indiana State Class)**

30. — Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set forth herein.

31. — Plaintiffs Warren Whitsey, David James, and Jerome Blatt (for the purposes of this count, "Plaintiffs") bring this claim on behalf of themselves and the Indiana State Class against all Defendants.

32. — Defendants are and were at all relevant times "merchant[s]" with respect to motor vehicles under Ind. Code §§ 26-1-2-104(1) and 26-1-2.1-103(3), and "sellers" of motor vehicles under § 26-1-2-103(1)(d).

33. ~~With respect to leases, Defendants are and were at all relevant times “lessors” of motor vehicles under Ind. Code § 26-1-2-1-103(1)(p).~~

34. ~~The Class Vehicles are and were at all relevant times “goods” within the meaning of Ind. Code §§ 26-1-2-105(1) and 26-1-2-1-103(1)(h).~~

35. ~~A warranty that the Class Vehicles were in merchantable condition and fit for the ordinary purpose for which vehicles are used is implied by law pursuant to Ind. Code §§ 26-1-2-314 and 26-1-2-1-212.~~

36. ~~The Class Vehicles did not comply with the implied warranty of merchantability because, at the time of sale and at all times thereafter, they were defective and not in merchantable condition, would not pass without objection in the trade, and were not fit for the ordinary purpose for which vehicles were used. Specifically, the Class Vehicles suffer from the SDM Calibration Defect, which may cause the airbags and seatbelt to fail to deploy during an accident, rendering the Class Vehicles inherently defective and dangerous.~~

37. ~~Defendants were provided reasonable notice of these issues by way of a letter sent by Plaintiffs on August 20, 2021, as well as numerous public NHTSA complaints and individual lawsuits, as detailed herein.~~

38. ~~Alternatively, any opportunity to cure the breach is unnecessary and futile.~~

39. ~~As a direct and proximate result of Defendants’ breach of the implied warranty of merchantability, Plaintiffs and Indiana State Class members have been damaged in an amount to be proven at trial.~~

## **12. Kansas**

### **KANSAS COUNT I:**

#### **Violations of the Kansas Consumer Protection Act**

#### **Kan. Stat. Ann. § 50-623 *et seq.***

#### **(On Behalf of the Kansas State Class)**

1. ~~Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.~~

2. ~~Plaintiff Kerry Batman (for the purposes of this count, “Plaintiff”) brings this claim on behalf of himself and the Kansas State Class against all Defendants.~~

3. ~~Each Defendant is a “supplier” under the Kansas Consumer Protection Act (“Kansas CPA”), Kan. Stat. Ann. § 50-624(l).~~

4. ~~Kansas State Class members are “consumers,” within the meaning of Kan. Stat. Ann. § 50-624(b), who purchased or leased one or more Class Vehicles.~~

5. ~~The sale of the Class Vehicles to the Kansas State Class members was a “consumer transaction” within the meaning of Kan. Stat. Ann. § 50-624(c).~~

6. ~~The Kansas CPA states “[n]o supplier shall engage in any deceptive act or practice in connection with a consumer transaction,” Kan. Stat. Ann. § 50-626(a), and that deceptive acts or practices include: (1) knowingly making representations or with reason to know that “(A) Property or services have sponsorship, approval, accessories, characteristics, ingredients, uses, benefits or quantities that they do not have;” and “(D) property or services are of particular standard, quality, grade, style or model, if they are of another which differs materially from the representation;” “(2) the willful use, in any oral or written representation, of exaggeration, falsehood, innuendo or ambiguity as to a material fact;” and “(3) the willful failure to state a material fact, or the willful concealment, suppression or omission of a material fact.” The Kansas CPA also provides that “[n]o supplier shall engage in any unconscionable act or practice in connection with a consumer transaction.” Kan. Stat. Ann. § 50-627(a).~~

7. ~~In the course of their business, Defendants violated the Kansas CPA by knowingly and intentionally misrepresenting, omitting, concealing, and/or failing to disclose material facts regarding the reliability, safety, and performance of the Class Vehicles, as detailed above.~~

8. ~~Specifically, by misrepresenting the Class Vehicles as safe and/or free from defects, and by failing to disclose and actively concealing the dangers and risk posed by the Class Vehicles and/or the SDM Calibration Defect, Defendants engaged in unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce, as prohibited by Kan. Stat. Ann. § 50-627(a).~~

9. ~~Defendants’ unfair or deceptive acts or practices, including misrepresentations, concealments, omissions, and/or suppressions of material facts, had a tendency or capacity to mislead and create a false impression in consumers, and were likely to and did in fact deceive~~

1 ~~reasonable consumers, including Plaintiff and Kansas State Class members, about the true safety~~  
2 ~~and reliability of Class Vehicles, the quality of the Class Vehicles, and the true value of the Class~~  
3 ~~Vehicles.~~

4 ~~10.—Defendants’ scheme and concealment of the SDM Calibration Defect and true~~  
5 ~~characteristics of the passenger safety systems in the Class Vehicles were material to Plaintiff and~~  
6 ~~Kansas State Class members, as the Defendants intended. Had they known the truth, Plaintiff and~~  
7 ~~Kansas State Class members would not have purchased or leased the Class Vehicles, or would~~  
8 ~~have paid significantly less for them.~~

9 ~~11.—Plaintiff and Kansas State Class members had no way of discerning that~~  
10 ~~Defendants’ representations were false and misleading and/or otherwise learning the facts that~~  
11 ~~Defendants had concealed or failed to disclose. Plaintiff and Kansas State Class members did not,~~  
12 ~~and could not, unravel Defendants’ deception on their own.~~

13 ~~12.—Defendants had an ongoing duty to Plaintiff and Kansas State Class members to~~  
14 ~~refrain from unfair or deceptive practices under the Kansas CPA in the course of their business.~~  
15 ~~Specifically, Defendants owed Plaintiff and Kansas State Class members a duty to disclose all the~~  
16 ~~material facts concerning the SDM Calibration Defect in the Class Vehicles because they~~  
17 ~~possessed exclusive knowledge, they intentionally concealed the defect from Plaintiff and Kansas~~  
18 ~~State Class members, and/or they made misrepresentations that were misleading because they~~  
19 ~~were contradicted by withheld facts.~~

20 ~~13.—Defendants’ violations present a continuing risk to the Kansas State Class as well~~  
21 ~~as to the general public. Defendants’ unlawful acts and practices complained of herein affect the~~  
22 ~~public interest.~~

23 ~~14.—Members of the Kansas State Class suffered ascertainable loss and actual damages~~  
24 ~~as a direct and proximate result of Defendants’ misrepresentations and concealment of and failure~~  
25 ~~to disclose material information. Defendants had an ongoing duty to all their customers to refrain~~  
26 ~~from unfair and deceptive practices under the Kansas CPA. All owners of Class Vehicles suffered~~  
27 ~~ascertainable loss as a result of Defendants’ deceptive and unfair acts and practices made in the~~  
28 ~~course of Defendants’ business.~~

~~15. As a direct and proximate result of Defendants' violations of the Kansas CPA, Plaintiff and the Kansas State Class have suffered injury in fact and/or actual damage.~~

~~16. Pursuant to Kan. Stat. Ann. § 50-634, the Kansas State Class seeks monetary relief against Defendants measured as the greater of (a) actual damages in an amount to be determined at trial and (b) statutory damages in the amount of \$10,000 for each Kansas State Class member.~~

~~17. Plaintiff also seeks an order enjoining Defendants' unfair, unlawful, and/or deceptive practices, declaratory relief, attorneys' fees, and any other just and proper relief available under Kan. Stat. Ann. § 50-623, et seq.~~

**KANSAS COUNT II:  
Breach of Express Warranty  
Kan. Stat. §§ 84-2-313 and 84-2A-210  
(On Behalf of the Kansas State Class)**

~~18. Plaintiffs re-allege and incorporate by reference all preceding allegations as though fully set forth herein.~~

~~19. Plaintiff Kerry Batman (for the purposes of this count, "Plaintiff") brings this claim on behalf of himself and the Kansas State Class against all Defendants.~~

~~20. Defendants are and were at all relevant times "merchant[s]" with respect to motor vehicles under Kan. Stat. §§ 84-2-104(1) and 84-2A-103(3), and "sellers" of motor vehicles under § 84-2-103(1)(d).~~

~~21. With respect to leases, Defendants are and were at all relevant times "lessors" of motor vehicles under Kan. Stat. § 84-2A-103(1)(p).~~

~~22. The Class Vehicles are and were at all relevant times "goods" within the meaning of Kan. Stat. §§ 84-2-105(1) and 84-2A-103(1)(h).~~

~~23. In connection with the purchase or lease of Class Vehicles, Defendants provided Plaintiff and Kansas State Class members with written express warranties covering the repair or replacement of components that are defective in materials or workmanship.~~

~~24. Defendants' warranties formed the basis of the bargain that was reached when Plaintiff and Kansas State Class members unknowingly purchased or leased Class Vehicles that came equipped with the SDM Calibration Defect.~~

25. — However, Defendants knew or should have known that the warranties were false and/or misleading. Specifically, Defendants were aware of the SDM Calibration Defect in the Class Vehicles, which made the vehicles inherently defective and dangerous at the time that they were sold and leased to Plaintiff and Kansas State Class members.

26. — Plaintiff and Kansas State Class members reasonably relied on the Defendants' express warranties when purchasing or leasing their Class Vehicles.

27. — Defendants knowingly breached their express warranties to repair defects in materials and workmanship by failing to repair the SDM Calibration Defect in the Class Vehicles. Defendants also breached their express warranties by providing a product containing defects that were never disclosed to Plaintiff and Kansas State Class members.

28. — Plaintiff and Kansas State Class members have provided the Defendants with reasonable notice and opportunity to cure the breaches of their express warranties by way of letter sent by Plaintiffs on August 20, 2021. Defendants are further on notice due to numerous public NHTSA complaints and individual lawsuits, as detailed herein.

29. — Alternatively, any opportunity to cure the breach is unnecessary and futile.

30. — As a direct and proximate result of the Defendants' breach of express warranties, Plaintiff and Kansas State Class members have been damaged in an amount to be proven at trial.

### **KANSAS COUNT III:**

#### **Breach of Implied Warranty of Merchantability**

**Kan. Stat. §§ 84-2-314 and 84-2A-212**

**(On Behalf of the Kansas State Class)**

31. — Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set forth herein.

32. — Plaintiff Kerry Batman (for the purposes of this count, "Plaintiff") brings this claim on behalf of himself and the Kansas State Class against all Defendants.

33. — Defendants are and were at all relevant times "merchant[s]" with respect to motor vehicles under Kan. Stat. §§ 84-2-104(1) and 84-2A-103(3), and "sellers" of motor vehicles under § 84-2-103(1)(d).

34. ~~With respect to leases, Defendants are and were at all relevant times “lessors” of motor vehicles under Kan. Stat. § 84-2A-103(1)(p).~~

35. ~~The Class Vehicles are and were at all relevant times “goods” within the meaning of Kan. Stat. §§ 84-2-105(1) and 84-2A-103(1)(h).~~

36. ~~A warranty that the Class Vehicles were in merchantable condition and fit for the ordinary purpose for which vehicles are used is implied by law pursuant to Kan. Stat. §§ 84-2-314 and 84-2A-212.~~

37. ~~The Class Vehicles did not comply with the implied warranty of merchantability because, at the time of sale and at all times thereafter, they were defective and not in merchantable condition, would not pass without objection in the trade, and were not fit for the ordinary purpose for which vehicles were used. Specifically, the Class Vehicles suffer from the SDM Calibration Defect, which may cause the airbags and seatbelt to fail to deploy during an accident, rendering the Class Vehicles inherently defective and dangerous.~~

38. ~~Defendants were provided reasonable notice of these issues by way of a letter sent by Plaintiffs on August 20, 2021, as well as numerous public NHTSA complaints and individual lawsuits, as detailed herein.~~

39. ~~Alternatively, any opportunity to cure the breach is unnecessary and futile.~~

40. ~~As a direct and proximate result of Defendants’ breach of the implied warranty of merchantability, Plaintiff and Kansas State Class members have been damaged in an amount to be proven at trial.~~

### **13. Louisiana**

#### **LOUISIANA COUNT I: Violations of the Louisiana Unfair Trade Practices and Consumer Protection Law La. Stat. Ann. § 51:1401, *et seq.* (On Behalf of the Louisiana State Class)**

1. ~~Plaintiffs reallege and incorporate by reference all preceding allegations as though fully set forth herein.~~



~~2. Plaintiff Allan Martin (for the purposes of this count, “Plaintiff”) brings this claim on behalf of himself and the Louisiana State Class against all Defendants.~~

~~3. Defendants, Plaintiff, and the Louisiana State Class are “persons” within the meaning of the La. Rev. Stat. § 51:1402(8)~~

~~4. Plaintiff and Louisiana State Class members are “consumers” within the meaning of La. Rev. Stat. § 51:1402(1).~~

~~5. Defendants engaged in “trade” or “commerce” within the meaning of La. Rev. Stat. § 51:1402(10).~~

~~6. The Louisiana Unfair Trade Practices and Consumer Protection Law (“Louisiana CPL”) makes unlawful “deceptive acts or practices in the conduct of any trade or commerce.” La. Rev. Stat. § 51:1405(A). Defendants participated in misleading, false, or deceptive acts that violated the Louisiana CPL.~~

~~7. In the course of their business, Defendants violated the Louisiana CPL by knowingly and intentionally misrepresenting, omitting, concealing, and/or failing to disclose material facts regarding the reliability, safety, and performance of the Class Vehicles, as detailed above.~~

~~8. Specifically, by misrepresenting the Class Vehicles as safe and/or free from defects, and by failing to disclose and actively concealing the dangers and risk posed by the Class Vehicles and/or the SDM Calibration Defect, Defendants engaged in one or more unfair or deceptive business practices prohibited by La. Rev. Stat. § 51:1405(A).~~

~~9. Defendants’ unfair or deceptive acts or practices, including misrepresentations, concealments, omissions, and/or suppressions of material facts, had a tendency or capacity to mislead and create a false impression in consumers, and were likely to and did in fact deceive reasonable consumers, including Plaintiff and Louisiana State Class members, about the true safety and reliability of Class Vehicles, the quality of the Class Vehicles, and the true value of the Class Vehicles.~~

~~10. Defendants’ scheme and concealment of the SDM Calibration Defect in the Class Vehicles were material to Plaintiff and Louisiana State Class members, as Defendants intended.~~

1 ~~Had they known the truth, Plaintiff and Louisiana State Class members would not have purchased~~  
2 ~~or leased the Class Vehicles, or would have paid significantly less for them.~~

3 ~~11.—Plaintiff and Louisiana State Class members had no way of discerning that the~~  
4 ~~Defendants' representations were false and misleading and/or otherwise learning the facts that the~~  
5 ~~Defendants had concealed or failed to disclose. Plaintiff and Louisiana State Class members did~~  
6 ~~not, and could not, unravel the Defendants' deception on their own.~~

7 ~~12.—Defendants had an ongoing duty to Plaintiff and Louisiana State Class members to~~  
8 ~~refrain from unfair or deceptive practices under the Louisiana CPL in the course of their business.~~  
9 ~~Specifically, Defendants owed Plaintiff and Louisiana State Class members a duty to disclose all~~  
10 ~~the material facts concerning the SDM Calibration Defect in the Class Vehicles because they~~  
11 ~~possessed exclusive knowledge, they intentionally concealed the defect from Plaintiff and~~  
12 ~~Louisiana State Class members, and/or they made misrepresentations that were misleading~~  
13 ~~because they were contradicted by withheld facts.~~

14 ~~13.—Defendants' violations present a continuing risk to Plaintiff and Louisiana State~~  
15 ~~Class members, as well as to the general public. Defendants' unlawful acts and practices~~  
16 ~~complained of herein affect the public interest.~~

17 ~~14.—Plaintiff and the Louisiana State Class suffered ascertainable loss and actual~~  
18 ~~damages as a direct and proximate result of Defendants' misrepresentations and concealment of~~  
19 ~~and failure to disclose material information.~~

20 ~~15.—Pursuant to La. Rev. Stat. § 51:1409, Plaintiff and the Louisiana State Class seek~~  
21 ~~to recover actual damages in an amount to be determined at trial; treble damages for Defendants'~~  
22 ~~knowing violations of the Louisiana CPL; an order enjoining Defendants' unfair, unlawful, and/or~~  
23 ~~deceptive practices; declaratory relief; attorneys' fees; and any other just and proper relief~~  
24 ~~available under La. Rev. Stat. § 51:1409.~~

**LOUISIANA COUNT II:  
Breach of Implied Warranty of Merchantability/  
Warranty Against Redhibitory Defects  
La. Civ. Code Art. 2520, 2524  
(On Behalf of the Louisiana State Class)**

~~16.——Plaintiffs incorporate by reference all allegations in this Complaint as though fully set forth herein.~~

~~17.——Plaintiff Allan Martin (for the purposes of this count, “Plaintiff”) brings this claim on behalf of himself and the Louisiana State Class against all Defendants.~~

~~18.——Defendants are and were at all relevant times merchants with respect to motor vehicles.~~

~~19.——A warranty that the Class Vehicles were in merchantable condition is implied by law in the instant transactions.~~

~~20.——The Class Vehicles did not comply with the implied warranty of merchantability because, at the time of sale and at all times thereafter, they were defective and not in merchantable condition, would not pass without objection in the trade, and were not fit for the ordinary purpose for which vehicles were used. Specifically, the Class Vehicles suffer from the SDM Calibration Defect, which may cause the airbags and seatbelt to fail to deploy during an accident, rendering the Class Vehicles inherently defective and dangerous.~~

~~21.——Defendants were provided reasonable notice of these issues by way of a letter sent on August 20, 2021, as well as numerous public NHTSA complaints and individual lawsuits, as detailed herein.~~

~~22.——Alternatively, any opportunity to cure the breach is unnecessary and futile.~~

~~23.——As a direct and proximate result of Defendants’ breach of the warranty of merchantability, Plaintiff and Louisiana State Class members have been damaged in an amount to be proven at trial.~~

**14. ~~Maryland~~**

**~~MARYLAND COUNT I:  
Violations of the Maryland Consumer Protection Act  
Md. Code Com. Law § 13-101 et seq.  
(On Behalf of the Maryland State Class)~~**

~~1. Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.~~

~~2. Plaintiff Richard Baker (for the purposes of this count, “Plaintiff”) brings this claim on behalf of himself and the Maryland State Class against all Defendants.~~

~~3. Defendants and the Maryland State Class are “persons” within the meaning of Md. Code Com. Law § 13-101(h).~~

~~4. The Maryland Consumer Protection Act (“Maryland CPA”) provides that a person may not engage in any unfair or deceptive trade practice in the sale of any consumer good. Md. Code Com. Law § 13-303. Defendants participated in misleading, false, or deceptive acts that violated the Maryland CPA.~~

~~5. In the course of their business, Defendants violated the Maryland CPA by knowingly and intentionally misrepresenting, omitting, concealing, and/or failing to disclose material facts regarding the reliability, safety, and performance of the Class Vehicles, as detailed above.~~

~~6. Specifically, by misrepresenting the Class Vehicles as safe and/or free from defects, and by failing to disclose and actively concealing the dangers and risk posed by the Class Vehicles and/or the SDM Calibration Defect, Defendants engaged in unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce, as prohibited by Md. Code Com. Law § 13-303.~~

~~7. Defendants’ unfair or deceptive acts or practices, including misrepresentations, concealments, omissions, and/or suppressions of material facts, had a tendency or capacity to mislead and create a false impression in consumers, and were likely to and did in fact deceive reasonable consumers, including Plaintiff and Maryland State Class members, about the true safety and reliability of Class Vehicles, the quality of the Class Vehicles, and the true value of the Class Vehicles.~~

1           8. — Defendants' scheme and concealment of the SDM Calibration Defect and true  
2 characteristics of the passenger safety systems in the Class Vehicles were material to Plaintiff and  
3 Maryland State Class members, as the Defendants intended. Had they known the truth, Plaintiff  
4 and Maryland State Class members would not have purchased or leased the Class Vehicles, or  
5 would have paid significantly less for them.

6           9. — Plaintiff and Maryland State Class members had no way of discerning that  
7 Defendants' representations were false and misleading and/or otherwise learning the facts that  
8 Defendants had concealed or failed to disclose. Plaintiff and Maryland State Class members did  
9 not, and could not, unravel Defendants' deception on their own.

10          10. — Defendants had an ongoing duty to Plaintiff and Maryland State Class members to  
11 refrain from unfair or deceptive practices under the Maryland CPA in the course of their business.  
12 Specifically, Defendants owed Plaintiff and Maryland State Class members a duty to disclose all  
13 the material facts concerning the SDM Calibration Defect in the Class Vehicles because they  
14 possessed exclusive knowledge, they intentionally concealed the defect from Plaintiff and  
15 Maryland State Class members, and/or they made misrepresentations that were misleading  
16 because they were contradicted by withheld facts.

17          11. — Defendants' violations present a continuing risk to the Maryland State Class as  
18 well as to the general public. Defendants' unlawful acts and practices complained of herein affect  
19 the public interest.

20          12. — The Maryland State Class suffered ascertainable loss and actual damages as a  
21 direct and proximate result of Defendants' misrepresentations and concealment of and failure to  
22 disclose material information. Defendants had an ongoing duty to all their customers to refrain  
23 from unfair and deceptive practices under the Maryland CPA. All owners and lessees of Class  
24 Vehicles suffered ascertainable loss as a result of Defendants' deceptive and unfair acts and  
25 practices made in the course of Defendants' business.

26          13. — As a direct and proximate result of Defendants' violations of the Maryland CPA,  
27 the Maryland State Class has suffered injury in fact and/or actual damage.

~~14. Pursuant to Md. Code Com. Law § 13-408, the Maryland State Class seeks actual damages, attorneys' fees, and any other just and proper relief available under the Maryland CPA.~~

**MARYLAND COUNT II:  
Maryland Lemon Law  
Md. Code Com. Law § 14-1501 *et seq.*  
(On Behalf of the Maryland State Class)**

~~15. Plaintiffs incorporate by reference all allegations in this Complaint as though fully set forth.~~

~~16. Plaintiff Richard Baker (for the purposes of this count, "Plaintiff") brings this claim on behalf of himself and the Maryland State Class against all Defendants.~~

~~17. Plaintiff and the Maryland State Class own or lease "motor vehicles" within the meaning of Md. Code, Com. Law § 14-1501(f), because these vehicles were registered in the state and fall within the categories of vehicles manufactured, assembled, or distributed by Defendants. These vehicles are not auto-homes.~~

~~18. Defendants are "manufacturer[s]" of the Class Vehicles within the meaning of Md. Code, Com. Law § 14-1501(d).~~

~~19. The Maryland State Class members are "consumers" within the meaning of Md. Code Com. Law § 14-1501(b) because they: purchased the Class Vehicles, were transferred the Class Vehicles during the warranty period, or are otherwise entitled to the attendant terms of warranty.~~

~~20. The Class Vehicles did not conform to their "warranties" under Md. Code Com. Law § 14-1501(g) during the warranty period because they contained the SDM Calibration Defect and were therefore not fit for the ordinary purpose for which vehicles are used.~~

~~21. Defendants had actual knowledge of the SDM Calibration Defect during the "warranty period" within the meaning of Md. Code, Com. Law § 14-1501(e). But the Defect continued to exist throughout this term, as it has not been fixed. Plaintiff and Maryland State Class members are excused from notifying Defendants of the Defect because they were already fully aware of the problem and any repair attempt is futile.~~

22. ~~Defendants have had a reasonable opportunity to cure the SDM Calibration Defect during the warranty period because of their actual knowledge of, creation of, and attempt to conceal the Defect, but has not done so as required under Md. Code, Com. Law § 14-1502.~~

23. ~~Plaintiff and the Maryland State Class demands a full refund of the purchase price, including all license fees, registration fees, and any similar governmental charges. Md. Code Com. Law § 14-1502(c). Once payment has been tendered, Maryland State Class members will return their vehicles.~~

**MARYLAND COUNT III:  
Breach of Express Warranty  
Md. Code Com. Law §§ 2-313 and 2a-210  
(On Behalf of the Maryland State Class)**

24. ~~Plaintiffs re-allege and incorporate by reference all preceding allegations as though fully set forth herein.~~

25. ~~Plaintiff Richard Baker (for the purposes of this count, “Plaintiff”) brings this claim on behalf of himself and the Maryland State Class against all Defendants.~~

26. ~~Defendants are and were at all relevant times “merchant[s]” with respect to motor vehicles under Md. Code Com. Law § 2-104(1) and “sellers” of motor vehicles under § 2-103(1)(d).~~

27. ~~With respect to leases, Defendants are and were at all relevant times “lessors” of motor vehicles under Md. Code Com. Law § 2A-103(1)(p).~~

28. ~~The Class Vehicles are and were at all relevant times “goods” within the meaning of Md. Code Com. Law §§ 2-105(1) and 2a-103(1)(h).~~

29. ~~In connection with the purchase or lease of Class Vehicles, the Defendants provided Plaintiff and Maryland State Class members with written express warranties covering the repair or replacement of components that are defective in materials or workmanship.~~

30. ~~Defendants’ warranties formed the basis of the bargain that was reached when Plaintiff and Maryland State Class members unknowingly purchased or leased Class Vehicles that came equipped with the SDM Calibration Defect.~~



31. ~~However, Defendants knew or should have known that the warranties were false and/or misleading. Specifically, Defendants were aware of the SDM Calibration Defect in the Class Vehicles, which made the vehicles inherently defective and dangerous at the time that they were sold and leased to Plaintiff and Maryland State Class members.~~

32. ~~Plaintiff and Maryland State Class members reasonably relied on the Defendants' express warranties when purchasing or leasing their Class Vehicles.~~

33. ~~Defendants knowingly breached their express warranties to repair defects in materials and workmanship by failing to repair the SDM Calibration Defect in the Class Vehicles. Defendants also breached their express warranties by providing a product containing defects that were never disclosed to Plaintiff and Maryland State Class members.~~

34. ~~Plaintiff and Maryland State Class members have provided the Defendants with reasonable notice and opportunity to cure the breaches of their express warranties by way of letter sent by Plaintiffs on August 20, 2021. Defendants are further on notice due to numerous public NHTSA complaints and individual lawsuits, as detailed herein.~~

35. ~~Alternatively, any opportunity to cure the breach is unnecessary and futile.~~

36. ~~As a direct and proximate result of the Defendants' breach of express warranties, Plaintiff and Maryland State Class members have been damaged in an amount to be proven at trial.~~

**MARYLAND COUNT IV:  
Breach of Implied Warranty of Merchantability  
Md. Code Com. Law §§ 2-314 and 2a-212  
(On Behalf of the Maryland State Class)**

37. ~~Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set forth herein.~~

38. ~~Plaintiff Richard Baker (for the purposes of this count, "Plaintiff") brings this claim on behalf of himself and the Maryland State Class against all Defendants.~~

39. ~~Defendants are and were at all relevant times "merchant[s]" with respect to motor vehicles under Md. Code Com. Law § 2-104(1) and "sellers" of motor vehicles under § 2-103(1)(d).~~

40. ~~With respect to leases, Defendants are and were at all relevant times “lessors” of motor vehicles under Md. Code Com. Law § 2A-103(1)(p).~~

41. ~~The Class Vehicles are and were at all relevant times “goods” within the meaning of Md. Code Com. Law §§ 2-105(1) and 2a-103(1)(h).~~

42. ~~A warranty that the Class Vehicles were in merchantable condition and fit for the ordinary purpose for which vehicles are used is implied by law pursuant to Md. Code Com. Law §§ 2-314, and 2a-212.~~

43. ~~The Class Vehicles did not comply with the implied warranty of merchantability because, at the time of sale and at all times thereafter, they were defective and not in merchantable condition, would not pass without objection in the trade, and were not fit for the ordinary purpose for which vehicles were used. Specifically, the Class Vehicles suffer from the SDM Calibration Defect, which may cause the airbags and seatbelt to fail to deploy during an accident, rendering the Class Vehicles inherently defective and dangerous.~~

44. ~~Defendants were provided reasonable notice of these issues by way of a letter sent by Plaintiffs on August 20, 2021, as well as numerous public NHTSA complaints and individual lawsuits, as detailed herein.~~

45. ~~Alternatively, any opportunity to cure the breach is unnecessary and futile.~~

46. ~~As a direct and proximate result of Defendants’ breach of the implied warranty of merchantability, Plaintiff and Maryland State Class members have been damaged in an amount to be proven at trial.~~

## **15. Michigan**

### **MICHIGAN COUNT I:**

#### **Violations of the Michigan Consumer Protection Act**

#### **Mich. Comp. Laws § 445.903, *et seq.***

#### **(On Behalf of the Michigan State Class)**

1. ~~Plaintiffs reallege and incorporate by reference all preceding allegations as though fully set forth herein.~~

2. ~~Plaintiffs Alisha Gonzalez, Rachel Bailey, Carl Wurlinger, George Bayer, Zeckery Henslee, and Judy Haviland (for the purposes of this count, “Plaintiffs”) bring this claim on behalf of themselves and the Michigan State Class against all Defendants.~~

3. ~~Plaintiffs and Michigan State Class members are “person[s]” within the meaning of the Mich. Comp. Laws § 445.902(1)(d).~~

4. ~~Defendants are “person[s]” engaged in “trade or commerce” within the meaning of the Mich. Comp. Laws § 445.902(1)(d) and (g).~~

5. ~~The Michigan Consumer Protection Act (“Michigan CPA”) prohibits “[u]nfair, unconscionable, or deceptive methods, acts, or practices in the conduct of trade or commerce . . . .” Mich. Comp. Laws § 445.903(1).~~

6. ~~In the course of their business, Defendants violated the Michigan CPA by knowingly and intentionally misrepresenting, omitting, concealing, and/or failing to disclose material facts regarding the reliability, safety, and performance of the Class Vehicles, as detailed above.~~

7. ~~Specifically, by misrepresenting the Class Vehicles as safe and/or free from defects, and by failing to disclose and actively concealing the dangers and risk posed by the Class Vehicles and/or the SDM Calibration Defect, Defendants engaged in one or more of the following unfair or deceptive business practices prohibited by Mich. Comp. Laws § 445.903:~~

a. ~~Representing that the Class Vehicles have characteristics, uses, benefits, and qualities which they do not have;~~

b. ~~Representing that the Class Vehicles are of a particular standard, quality, and grade when they are not;~~

c. ~~Advertising the Class Vehicles with the intent not to sell or lease them as advertised;~~

d. ~~Failing to reveal the defective SDM calibration, which could not reasonably be known by the consumer;~~

e. ~~Making a representation of fact or statement of fact regarding the safety of the Class Vehicles, which is material to the lease or purchase of the Class Vehicles, such that~~

~~consumers reasonably believe the represented or suggested state of affairs to be other than it actually is; and~~

~~f.—— Failing to reveal the SDM Calibration Defect in light of representations of fact regarding the safety of the Class Vehicles made in a positive manner.~~

~~Mich. Comp. Laws §§ 445.903(1)(e), (e), (g), (s), (bb), and (cc).~~

~~8.—— Defendants' unfair or deceptive acts or practices, including misrepresentations, concealments, omissions, and/or suppressions of material facts, had a tendency or capacity to mislead and create a false impression in consumers, and were likely to and did in fact deceive reasonable consumers, including Plaintiffs and Michigan State Class members, about the true safety and reliability of Class Vehicles, the quality of the Class Vehicles, and the true value of the Class Vehicles.~~

~~9.—— Defendants' scheme and concealment of the SDM Calibration Defect in the Class Vehicles were material to Plaintiffs and Michigan State Class members, as Defendants intended. Had they known the truth, Plaintiffs and Michigan State Class members would not have purchased or leased the Class Vehicles, or would have paid significantly less for them.~~

~~10.—— Plaintiffs and Michigan State Class members had no way of discerning that the Defendants' representations were false and misleading and/or otherwise learning the facts that the Defendants had concealed or failed to disclose. Plaintiffs and Michigan State Class members did not, and could not, unravel the Defendants' deception on their own.~~

~~11.—— Defendants had an ongoing duty to Plaintiffs and Michigan State Class members to refrain from unfair or deceptive practices under the Michigan CPA in the course of their business. Specifically, Defendants owed Plaintiffs and Michigan State Class members a duty to disclose all the material facts concerning the SDM Calibration Defect in the Class Vehicles because they possessed exclusive knowledge, they intentionally concealed the defect from Plaintiffs and Michigan State Class members, and/or they made misrepresentations that were misleading because they were contradicted by withheld facts.~~

12. ~~Defendants' violations present a continuing risk to Plaintiffs and Michigan State Class members, as well as to the general public. Defendants' unlawful acts and practices complained of herein affect the public interest.~~

13. ~~Plaintiffs and the Michigan State Class suffered ascertainable loss and actual damages as a direct and proximate result of Defendants' misrepresentations and concealment of and failure to disclose material information.~~

14. ~~Plaintiffs and the Michigan State Class seek injunctive relief to enjoin Defendants from continuing its unfair and deceptive acts; monetary relief against Defendants measured as the greater of (a) actual damages in an amount to be determined at trial, and (b) statutory damages in the amount of \$250 for each Michigan State Class member; reasonable attorneys' fees; and any other just and proper relief available under Mich. Comp. Laws § 445.911.~~

15. ~~Plaintiffs and the Michigan State Class also seeks punitive damages against Defendants because they carried out despicable conduct with willful and conscious disregard of the rights of others. Defendants intentionally and willfully misrepresented the reliability and safety of the Class Vehicles and concealed material facts that only they knew—all to avoid the expense and public relations nightmare of correcting a flaw in the Class Vehicles. Defendants' unlawful conduct constitutes oppression and fraud warranting punitive damages.~~

**MICHIGAN COUNT II:  
Breach of Express Warranty  
Mich. Comp. Law §§ 440.2313 and 440.2860  
(On Behalf of the Michigan State Class)**

16. ~~Plaintiffs reallege and incorporate by reference all preceding allegations as though fully set forth herein.~~

17. ~~Plaintiffs Alisha Gonzalez, Rachel Bailey, Carl Wurmlinger, George Bayer, Zeckery Henslee, and Judy Haviland (for the purposes of this count, "Plaintiffs") bring this claim on behalf of themselves and the Michigan State Class against all Defendants.~~

18. ~~Defendants are and were at all relevant times "merchant[s]" with respect to motor vehicles under Mich. Comp. Laws § 440.2104(1) and "sellers" of motor vehicles under § 440.2103(1)(d).~~

19. ~~With respect to leases, Defendants are and were at all relevant times “lessors” of motor vehicles under Mich. Comp. Laws § 440.2803(1)(p).~~

20. ~~The Class Vehicles are and were at all relevant times “goods” within the meaning of Mich. Comp. Laws §§ 440.2105(1) and 440.2803(1)(h).~~

21. ~~All Michigan State Class members who purchased Class Vehicles in Michigan are “buyers” within the meaning of Mich. Comp. Laws § 440.2103(1)(a).~~

22. ~~All Michigan State Class members who leased Class Vehicles in Michigan are “lessees” within the meaning of Mich. Comp. Laws § 440.2803(1)(n).~~

23. ~~In connection with the purchase or lease of Class Vehicles, Defendants provided Plaintiffs and Michigan State Class members with written express warranties covering the repair or replacement of components that are defective in materials or workmanship.~~

24. ~~Defendants’ warranties formed the basis of the bargain that was reached when Plaintiffs and Michigan State Class members unknowingly purchased or leased Class Vehicles that came equipped with the SDM Calibration Defect.~~

25. ~~However, Defendants knew or should have known that the warranties were false and/or misleading. Specifically, Defendants were aware of the SDM Calibration Defect in the Class Vehicles, which made the vehicles inherently defective and dangerous at the time that they were sold and leased to Plaintiffs and Michigan State Class members.~~

26. ~~Plaintiffs and Michigan State Class members reasonably relied on the Defendants’ express warranties when purchasing or leasing their Class Vehicles.~~

27. ~~Defendants knowingly breached their express warranties to repair defects in materials and workmanship by failing to repair the SDM Calibration Defect in the Class Vehicles. Defendants also breached their express warranties by providing a product containing defects that were never disclosed to Plaintiffs and Michigan State Class members.~~

28. ~~Plaintiffs and Michigan State Class members have provided the Defendants with reasonable notice and opportunity to cure the breaches of their express warranties by way of letter sent by Plaintiffs on August 20, 2021. Defendants are further on notice due to numerous public NHTSA complaints and individual lawsuits, as detailed herein.~~

1 ~~29.—Alternatively, any opportunity to cure the breach is unnecessary and futile.~~

2 ~~30.—As a direct and proximate result of the Defendants’ breach of express warranties,~~  
 3 ~~Plaintiffs and Michigan State Class members have been damaged in an amount to be proven at~~  
 4 ~~trial.~~

5 **MICHIGAN COUNT III:**  
 6 **Breach of Implied Warranty of Merchantability**  
 7 **Mich. Comp. Laws §§ 440.2314 and 440.2860**  
 8 **(On Behalf of the Michigan State Class)**

9 ~~31.—Plaintiffs reallege and incorporate by reference all preceding allegations as though~~  
 10 ~~fully set forth herein.~~

11 ~~32.—Plaintiffs Alisha Gonzalez, Rachel Bailey, Carl Wurmlinger, George Bayer,~~  
 12 ~~Zeckery Henslee, and Judy Haviland (for the purposes of this count, “Plaintiffs”) bring this claim~~  
 13 ~~on behalf of themselves and the Michigan State Class against all Defendants.~~

14 ~~33.—Defendants are and were at all relevant times “merchant[s]” with respect to motor~~  
 15 ~~vehicles under Mich. Comp. Laws § 440.2104(1) and “sellers” of motor vehicles under~~  
 16 ~~§ 440.2103(1)(d).~~

17 ~~34.—With respect to leases, Defendants are and were at all relevant times “lessors” of~~  
 18 ~~motor vehicles under Mich. Comp. Laws § 440.2803(1)(p).~~

19 ~~35.—All Michigan State Class members who purchased Class Vehicles in Michigan are~~  
 20 ~~“buyers” within the meaning of Mich. Comp. Laws § 440.2103(1)(a).~~

21 ~~36.—All Michigan State Class members who leased Class Vehicles in Michigan are~~  
 22 ~~“lessees” within the meaning of Mich. Comp. Laws § 440.2803(1)(n).~~

23 ~~37.—The Class Vehicles are and were at all relevant times “goods” within the meaning~~  
 24 ~~of Mich. Comp. Laws §§ 440.2105(1) and 440.2803(1)(h).~~

25 ~~38.—A warranty that the Class Vehicles were in merchantable condition and fit for the~~  
 26 ~~ordinary purpose for which vehicles are used is implied by law pursuant to Mich. Comp. Laws~~  
 27 ~~§§ 440.2314 and 440.2862.~~

28 ~~39.—The Class Vehicles did not comply with the implied warranty of merchantability~~  
 because, at the time of sale and at all times thereafter, they were defective and not in



~~merchantable condition, would not pass without objection in the trade, and were not fit for the ordinary purpose for which vehicles were used. Specifically, the Class Vehicles suffer from the SDM Calibration Defect, which may cause the airbags and seatbelt to fail to deploy during an accident, rendering the Class Vehicles inherently defective and dangerous.~~

~~40.—Defendants were provided reasonable notice of these issues by way of a letter sent by Plaintiffs on August 20, 2021. Defendants are further on notice due to numerous public NHTSA complaints and individual lawsuits, as detailed herein.~~

~~41.—Alternatively, any opportunity to cure the breach is unnecessary and futile.~~

~~42.—As a direct and proximate result of Defendants’ breach of the implied warranty of merchantability, Plaintiffs and Michigan State Class members have been damaged in an amount to be proven at trial.~~

#### **16. Minnesota**

##### **MINNESOTA COUNT I:**

##### **Violations of the Minnesota Prevention of Consumer Fraud Act**

##### **Minn. Stat. § 325F.68 *et seq.***

##### **(On Behalf of the Minnesota State Class)**

~~1.—Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.~~

~~2.—Plaintiff Kimberly Hickle (for the purposes of this count, “Plaintiff”) brings this claim on behalf of herself and the Minnesota State Class against all Defendants.~~

~~3.—The Class Vehicles constitute “merchandise” within the meaning of Minn. Stat. § 325F.68(2).~~

~~4.—The Minnesota Prevention of Consumer Fraud Act (“Minnesota CFA”) prohibits “[t]he act, use, or employment by any person of any fraud, false pretense, false promise, misrepresentation, misleading statement or deceptive practice, with the intent that others rely thereon in connection with the sale of any merchandise, whether or not any person has in fact been misled, deceived, or damaged thereby . . . .” Minn. Stat. § 325F.69(1). Defendants participated in misleading, false, or deceptive acts that violated the Minnesota CFA.~~

~~5.—In the course of their business, Defendants violated the Minnesota CFA by knowingly and intentionally misrepresenting, omitting, concealing, and/or failing to disclose~~

1 ~~material facts regarding the reliability, safety, and performance of the Class Vehicles, as detailed~~  
2 ~~above.~~

3 ~~6.——Specifically, by misrepresenting the Class Vehicles as safe and/or free from~~  
4 ~~defects, and by failing to disclose and actively concealing the dangers and risk posed by the Class~~  
5 ~~Vehicles and/or the SDM Calibration Defect, Defendants engaged in unfair methods of~~  
6 ~~competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the~~  
7 ~~conduct of any trade or commerce, as prohibited by Minn. Stat. § 325F.69(1).~~

8 ~~7.——Defendants’ unfair or deceptive acts or practices, including misrepresentations,~~  
9 ~~concealments, omissions, and/or suppressions of material facts, had a tendency or capacity to~~  
10 ~~mislead and create a false impression in consumers, and were likely to and did in fact deceive~~  
11 ~~reasonable consumers, including Plaintiff and Minnesota State Class members, about the true~~  
12 ~~safety and reliability of Class Vehicles, the quality of the Class Vehicles, and the true value of the~~  
13 ~~Class Vehicles.~~

14 ~~8.——Defendants’ scheme and concealment of the SDM Calibration Defect and true~~  
15 ~~characteristics of the passenger safety systems in the Class Vehicles were material to Plaintiff and~~  
16 ~~Minnesota State Class members, as the Defendants intended. Had they known the truth, Plaintiff~~  
17 ~~and Minnesota State Class members would not have purchased or leased the Class Vehicles, or~~  
18 ~~would have paid significantly less for them.~~

19 ~~9.——Plaintiff and Minnesota State Class members had no way of discerning that~~  
20 ~~Defendants’ representations were false and misleading and/or otherwise learning the facts that~~  
21 ~~Defendants had concealed or failed to disclose. Plaintiff and Minnesota State Class members did~~  
22 ~~not, and could not, unravel Defendants’ deception on their own.~~

23 ~~10.——Defendants had an ongoing duty to Plaintiff and Minnesota State Class members~~  
24 ~~to refrain from unfair or deceptive practices under the Minnesota CFA in the course of their~~  
25 ~~business. Specifically, Defendants owed Plaintiff and Minnesota State Class members a duty to~~  
26 ~~disclose all the material facts concerning the SDM Calibration Defect in the Class Vehicles~~  
27 ~~because they possessed exclusive knowledge, they intentionally concealed the defect from~~  
28

~~Plaintiff and Minnesota State Class members, and/or they made misrepresentations that were misleading because they were contradicted by withheld facts.~~

~~11.—Defendants’ violations present a continuing risk to the Minnesota State Class as well as to the general public. Defendants’ unlawful acts and practices complained of herein affect the public interest.~~

~~12.—Minnesota State Class members suffered ascertainable loss and actual damages as a direct and proximate result of Defendants’ misrepresentations and concealment of and failure to disclose material information. Defendants had an ongoing duty to all their customers to refrain from unfair and deceptive practices under the Minnesota CFA. All owners of Class Vehicles suffered ascertainable loss as a result of Defendants’ deceptive and unfair acts and practices made in the course of Defendants’ business.~~

~~13.—As a direct and proximate result of Defendants’ violations of the Minnesota CFA, Minnesota State Class members have suffered injury in fact and/or actual damage.~~

~~14.—Pursuant to Minn. Stat. § 8.31(3a), Minnesota State Class members seek actual damages, attorneys’ fees, and any other just and proper relief available under the Minnesota CFA.~~

~~15.—Minnesota State Class members also seek punitive damages under Minn. Stat. § 549.20(1)(a) given the clear and convincing evidence that Defendants’ acts show deliberate disregard for the rights of others.~~

**~~MINNESOTA COUNT II:  
Violations of the Minnesota Uniform Deceptive Trade Practices Act  
Minn. Stat. § 325D.43-48 et seq.  
(On Behalf of the Minnesota State Class)~~**

~~16.—Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.~~

~~17.—Plaintiff Kimberly Hickle (for the purposes of this count, “Plaintiff”) brings this claim on behalf of herself and the Minnesota State Class against all Defendants.~~

~~18.—The Minnesota Deceptive Trade Practices Act (“Minnesota DTPA”) prohibits deceptive trade practices, which occur when a person “(5) represents that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that the person~~

1 ~~does not have;” “(7) represents that goods or services are of a particular standard, quality, or~~  
 2 ~~grade, or that goods are of a particular style or model, if they are of another;” and “(9) advertises~~  
 3 ~~goods or services with intent not to sell them as advertised.” Minn. Stat. § 325D.44. In the course~~  
 4 ~~of the Defendants’ business, it engaged in deceptive practices by representing that Class Vehicles~~  
 5 ~~have sponsorship, approval, characteristics, ingredients, uses, benefits, or qualities that they do~~  
 6 ~~not have; representing that Class Vehicles are of a particular standard, quality, or grade, or that~~  
 7 ~~goods are of a particular style or model, if they are of another; and advertising Class Vehicles~~  
 8 ~~with intent not to sell them as advertised. Defendants participated in misleading, false, or~~  
 9 ~~deceptive acts that violated the Minnesota DTPA.~~

10 ~~19.—Defendants’ actions as set forth herein occurred in the conduct of trade or~~  
 11 ~~commerce.~~

12 ~~20.—In the course of their business, Defendants violated the Minnesota DTPA by~~  
 13 ~~knowingly and intentionally misrepresenting, omitting, concealing, and/or failing to disclose~~  
 14 ~~material facts regarding the reliability, safety, and performance of the Class Vehicles, as detailed~~  
 15 ~~above.~~

16 ~~21.—Specifically, by misrepresenting the Class Vehicles as safe and/or free from~~  
 17 ~~defects, and by failing to disclose and actively concealing the dangers and risk posed by the Class~~  
 18 ~~Vehicles and/or the SDM Calibration Defect, Defendants engaged in unfair methods of~~  
 19 ~~competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the~~  
 20 ~~conduct of any trade or commerce, as prohibited by Minn. Stat. § 325D.44.~~

21 ~~22.—Defendants’ unfair or deceptive acts or practices, including misrepresentations,~~  
 22 ~~concealments, omissions, and/or suppressions of material facts, had a tendency or capacity to~~  
 23 ~~mislead and create a false impression in consumers, and were likely to and did in fact deceive~~  
 24 ~~reasonable consumers, including Plaintiff and Minnesota State Class members, about the true~~  
 25 ~~safety and reliability of Class Vehicles, the quality of the Class Vehicles, and the true value of the~~  
 26 ~~Class Vehicles.~~

27 ~~23.—Defendants’ scheme and concealment of the SDM Calibration Defect and true~~  
 28 ~~characteristics of the passenger safety systems in the Class Vehicles were material to Plaintiff and~~

1 ~~Minnesota State Class members, as the Defendants intended. Had they known the truth, Plaintiff~~  
2 ~~and Minnesota State Class members would not have purchased or leased the Class Vehicles, or~~  
3 ~~would have paid significantly less for them.~~

4 ~~24.—Plaintiff and Minnesota State Class members had no way of discerning that~~  
5 ~~Defendants' representations were false and misleading and/or otherwise learning the facts that~~  
6 ~~Defendants had concealed or failed to disclose. Plaintiff and Minnesota State Class members did~~  
7 ~~not, and could not, unravel Defendants' deception on their own.~~

8 ~~25.—Defendants had an ongoing duty to Plaintiff and Minnesota State Class members~~  
9 ~~to refrain from unfair or deceptive practices under the Minnesota DTPA in the course of their~~  
10 ~~business. Specifically, Defendants owed Plaintiff and Minnesota State Class members a duty to~~  
11 ~~disclose all the material facts concerning the SDM Calibration Defect in the Class Vehicles~~  
12 ~~because they possessed exclusive knowledge, they intentionally concealed the defect from~~  
13 ~~Plaintiff and Minnesota State Class members, and/or they made misrepresentations that were~~  
14 ~~misleading because they were contradicted by withheld facts.~~

15 ~~26.—Defendants' violations present a continuing risk to the Minnesota State Class as~~  
16 ~~well as to the general public. Defendants' unlawful acts and practices complained of herein affect~~  
17 ~~the public interest.~~

18 ~~27.—Minnesota State Class members suffered ascertainable loss and actual damages as~~  
19 ~~a direct and proximate result of Defendants' misrepresentations and concealment of and failure to~~  
20 ~~disclose material information. Defendants had an ongoing duty to all their customers to refrain~~  
21 ~~from unfair and deceptive practices under the Minnesota DTPA. All owners of Class Vehicles~~  
22 ~~suffered ascertainable loss as a result of Defendants' deceptive and unfair acts and practices made~~  
23 ~~in the course of Defendants' business.~~

24 ~~28.—As a direct and proximate result of Defendants' violations of the Minnesota~~  
25 ~~DTPA, Minnesota State Class members have suffered injury in fact and/or actual damage.~~

26 ~~29.—Pursuant Minn. Stat. §§ 8.31(3a) and 325D.45, the Minnesota State Class seeks~~  
27 ~~actual damages, attorneys' fees, and any other just and proper relief available under the~~  
28 ~~Minnesota DTPA.~~

**~~MINNESOTA COUNT III:  
Breach of Express Warranty  
Minn. Stat. §§ 336.2-313 and 336.2A-210  
(On Behalf of the Minnesota State Class)~~**

~~30.——Plaintiffs re-allege and incorporate by reference all preceding allegations as though fully set forth herein.~~

~~31.——Plaintiff Kimberly Hickie (for the purposes of this count, “Plaintiff”) brings this claim on behalf of herself and the Minnesota State Class against all Defendants.~~

~~32.——Defendants are and were at all relevant times “merchant[s]” with respect to motor vehicles under Minn. Stat. § 336.2-104(1) and “sellers” of motor vehicles under § 336.2-103(1)(d).~~

~~33.——With respect to leases, Defendants are and were at all relevant times “lessors” of motor vehicles under Minn. Stat. § 336.2A-103(1)(p).~~

~~34.——The Class Vehicles are and were at all relevant times “goods” within the meaning of Minn. Stat. §§ 336.2-105(1) and 336.2A-103(1)(h).~~

~~35.——In connection with the purchase or lease of Class Vehicles, Defendants provided Plaintiff and Minnesota State Class members with written express warranties covering the repair or replacement of components that are defective in materials or workmanship.~~

~~36.——Defendants’ warranties formed the basis of the bargain that was reached when Plaintiff and Minnesota State Class members unknowingly purchased or leased Class Vehicles that came equipped with the SDM Calibration Defect.~~

~~37.——However, Defendants knew or should have known that the warranties were false and/or misleading. Specifically, Defendants were aware of the SDM Calibration Defect in the Class Vehicles, which made the vehicles inherently defective and dangerous at the time that they were sold and leased to Plaintiff and Minnesota State Class members.~~

~~38.——Plaintiff and Minnesota State Class members reasonably relied on the Defendants’ express warranties when purchasing or leasing their Class Vehicles.~~

~~39.——Defendants knowingly breached their express warranties to repair defects in materials and workmanship by failing to repair the SDM Calibration Defect in the Class Vehicles.~~

~~Defendants also breached their express warranties by providing a product containing defects that were never disclosed to Plaintiff and Minnesota State Class members.~~

~~40.—Plaintiff and Minnesota State Class members have provided the Defendants with reasonable notice and opportunity to cure the breaches of their express warranties by way of letter sent by Plaintiffs on August 20, 2021. Defendants are further on notice due to numerous public NHTSA complaints and individual lawsuits, as detailed herein.~~

~~41.—Alternatively, any opportunity to cure the breach is unnecessary and futile.~~

~~42.—As a direct and proximate result of the Defendants’ breach of express warranties, Plaintiff and Minnesota State Class members have been damaged in an amount to be proven at trial.~~

**MINNESOTA COUNT IV:  
Breach of Implied Warranty of Merchantability  
Minn. Stat. §§ 336.2-314 and 336.2A-212  
(On Behalf of the Minnesota State Class)**

~~43.—Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set forth herein.~~

~~44.—Plaintiff Kimberly Hickle (for the purposes of this count, “Plaintiff”) brings this claim on behalf of herself and the Minnesota State Class against all Defendants.~~

~~45.—Defendants are and were at all relevant times “merchant[s]” with respect to motor vehicles under Minn. Stat. § 336.2-104(1) and “sellers” of motor vehicles under § 336.2-103(1)(d).~~

~~46.—With respect to leases, Defendants are and were at all relevant times “lessors” of motor vehicles under Minn. Stat. § 336.2A-103(1)(p).~~

~~47.—The Class Vehicles are and were at all relevant times “goods” within the meaning of Minn. Stat. §§ 336.2-105(1) and 336.2A-103(1)(h).~~

~~48.—A warranty that the Class Vehicles were in merchantable condition and fit for the ordinary purpose for which vehicles are used is implied by law pursuant to Minn. Stat. §§ 336.2-314 and 336.2A-212.~~



49. ~~The Class Vehicles did not comply with the implied warranty of merchantability because, at the time of sale and at all times thereafter, they were defective and not in merchantable condition, would not pass without objection in the trade, and were not fit for the ordinary purpose for which vehicles were used. Specifically, the Class Vehicles suffer from the SDM Calibration Defect, which may cause the airbags and seatbelt to fail to deploy during an accident, rendering the Class Vehicles inherently defective and dangerous.~~

50. ~~Defendants were provided reasonable notice of these issues by way of a letter sent by Plaintiffs on August 20, 2021, as well as numerous public NHTSA complaints and individual lawsuits, as detailed herein.~~

51. ~~Alternatively, any opportunity to cure the breach is unnecessary and futile.~~

52. ~~As a direct and proximate result of Defendants' breach of the implied warranty of merchantability, Plaintiff and Minnesota State Class members have been damaged in an amount to be proven at trial.~~

#### **17. Mississippi**

#### **MISSISSIPPI COUNT I: Violations of Mississippi Consumer Protection Act Miss. Code. Ann. § 75-24-1, et seq. (On Behalf of the Mississippi State Class)**

1. ~~Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.~~

2. ~~Plaintiffs Denise Wilson, Allan Miles, and Harryette Gosa (for the purposes of this count, "Plaintiffs") bring this claim on behalf of themselves and the Mississippi State Class against all Defendants.~~

3. ~~The Mississippi Consumer Protection Act ("Mississippi CPA") prohibits "unfair or deceptive trade practices in or affecting commerce." Miss. Code. Ann. § 75-24-5(1). Unfair or deceptive practices include, but are not limited to, "(e) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that he does not have;" "(g) Representing that goods or services are of a particular standard, quality, or grade,~~

1 ~~or that goods are of a particular style or model, if they are of another;” and “(i) Advertising goods~~  
2 ~~or services with intent not to sell them as advertised.” Miss. Code. Ann. § 75-24-5.~~

3 ~~4.——Defendants participated in deceptive trade practices that violated the Mississippi~~  
4 ~~CPA as described herein, including representing that Class Vehicles have characteristics, uses,~~  
5 ~~benefits, and qualities which they do not have; representing that Class Vehicles are of a particular~~  
6 ~~standard and quality when they are not; and advertising Class Vehicles with the intent not to sell~~  
7 ~~them as advertised.~~

8 ~~5.——In the course of their business, Defendants violated the Mississippi CPA by~~  
9 ~~knowingly and intentionally misrepresenting, omitting, concealing, and/or failing to disclose~~  
10 ~~material facts regarding the reliability, safety, and performance of the Class Vehicles, as detailed~~  
11 ~~above.~~

12 ~~6.——Specifically, by misrepresenting the Class Vehicles as safe and/or free from~~  
13 ~~defects, and by failing to disclose and actively concealing the dangers and risk posed by the Class~~  
14 ~~Vehicles and/or the SDM Calibration Defect, Defendants engaged in unfair methods of~~  
15 ~~competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the~~  
16 ~~conduct of any trade or commerce, as prohibited by Miss. Code. Ann. § 75-24-5.~~

17 ~~7.——Defendants’ unfair or deceptive acts or practices, including misrepresentations,~~  
18 ~~concealments, omissions, and/or suppressions of material facts, had a tendency or capacity to~~  
19 ~~mislead and create a false impression in consumers, and were likely to and did in fact deceive~~  
20 ~~reasonable consumers, including Plaintiffs and Mississippi State Class members, about the true~~  
21 ~~safety and reliability of Class Vehicles, the quality of the Class Vehicles, and the true value of the~~  
22 ~~Class Vehicles.~~

23 ~~8.——Defendants’ scheme and concealment of the SDM Calibration Defect and true~~  
24 ~~characteristics of the passenger safety systems in the Class Vehicles were material to Plaintiffs~~  
25 ~~and Mississippi State Class members, as the Defendants intended. Had they known the truth,~~  
26 ~~Plaintiffs and Mississippi State Class members would not have purchased or leased the Class~~  
27 ~~Vehicles, or would have paid significantly less for them.~~

1           9.——~~Plaintiffs and Mississippi State Class members had no way of discerning that~~  
2 ~~Defendants' representations were false and misleading and/or otherwise learning the facts that~~  
3 ~~Defendants had concealed or failed to disclose. Plaintiffs and Mississippi State Class members~~  
4 ~~did not, and could not, unravel Defendants' deception on their own.~~

5           10.——~~Defendants had an ongoing duty to Plaintiffs and Mississippi State Class members~~  
6 ~~to refrain from unfair or deceptive practices under the Mississippi CPA in the course of their~~  
7 ~~business. Specifically, Defendants owed Plaintiffs and Mississippi State Class members a duty to~~  
8 ~~disclose all the material facts concerning the SDM Calibration Defect in the Class Vehicles~~  
9 ~~because they possessed exclusive knowledge, they intentionally concealed the defect from~~  
10 ~~Plaintiffs and Mississippi State Class members, and/or they made misrepresentations that were~~  
11 ~~misleading because they were contradicted by withheld facts.~~

12           11.——~~Defendants' violations present a continuing risk to Plaintiffs and Mississippi State~~  
13 ~~Class members, as well as to the general public. Defendants' unlawful acts and practices~~  
14 ~~complained of herein affect the public interest.~~

15           12.——~~Mississippi State Class members suffered ascertainable loss and actual damages as~~  
16 ~~a direct and proximate result of Defendants' misrepresentations and concealment of and failure to~~  
17 ~~disclose material information. Defendants had an ongoing duty to all their customers to refrain~~  
18 ~~from unfair and deceptive practices under the Mississippi CPA. All owners of Class Vehicles~~  
19 ~~suffered ascertainable loss as a result of Defendants' deceptive and unfair acts and practices made~~  
20 ~~in the course of Defendants' business.~~

21           13.——~~As a direct and proximate result of Defendants' violations of the Mississippi CPA,~~  
22 ~~Mississippi State Class members have suffered injury in fact and/or actual damage.~~

23           14.——~~Plaintiffs' seek actual damages in an amount to be determined at trial any other~~  
24 ~~just and proper relief available under the Mississippi CPA.~~

**MISSISSIPPI COUNT II:  
Breach of Express Warranty  
Miss. Code §§ 75-2-313 and 75-2A-210  
(On Behalf of the Mississippi State Class)**

15. ~~Plaintiffs re-allege and incorporate by reference all preceding allegations as though fully set forth herein.~~

16. ~~Plaintiffs Denise Wilson, Allan Miles, and Harryette Gosa (for the purposes of this count, "Plaintiffs") bring this claim on behalf of themselves and the Mississippi State Class against all Defendants.~~

17. ~~Defendants are and were at all relevant times "merchant[s]" with respect to motor vehicles under Miss. Code § 75-2-104(1) and "sellers" of motor vehicles under § 75-2-103(1)(d).~~

18. ~~With respect to leases, Defendants are and were at all relevant times "lessors" of motor vehicles under Miss. Code § 75-2A-103(1)(p).~~

19. ~~The Class Vehicles are and were at all relevant times "goods" within the meaning of Miss. Code §§ 75-2-105(1) and 75-2A-103(1)(h).~~

20. ~~In connection with the purchase or lease of Class Vehicles, Defendants provided Plaintiffs and Mississippi State Class members with written express warranties covering the repair or replacement of components that are defective in materials or workmanship.~~

21. ~~Defendants' warranties formed the basis of the bargain that was reached when Plaintiffs and Mississippi State Class members unknowingly purchased or leased Class Vehicles that came equipped with the SDM Calibration Defect.~~

22. ~~However, Defendants knew or should have known that the warranties were false and/or misleading. Specifically, Defendants were aware of the SDM Calibration Defect in the Class Vehicles, which made the vehicles inherently defective and dangerous at the time that they were sold and leased to Plaintiffs and Mississippi State Class members.~~

23. ~~Plaintiffs and Mississippi State Class members reasonably relied on the Defendants' express warranties when purchasing or leasing their Class Vehicles.~~

24. ~~Defendants knowingly breached their express warranties to repair defects in materials and workmanship by failing to repair the SDM Calibration Defect in the Class Vehicles. Defendants also breached their express warranties by providing a product containing defects that were never disclosed to Plaintiffs and Mississippi State Class members.~~

25. ~~Plaintiffs and Mississippi State Class members have provided the Defendants with reasonable notice and opportunity to cure the breaches of their express warranties by way of letter sent by Plaintiffs on August 20, 2021. Defendants are further on notice due to numerous public NHTSA complaints and individual lawsuits, as detailed herein.~~

26. ~~Alternatively, any opportunity to cure the breach is unnecessary and futile.~~

27. ~~As a direct and proximate result of the Defendants' breach of express warranties, Plaintiffs and Mississippi State Class members have been damaged in an amount to be proven at trial.~~

**MISSISSIPPI COUNT III:  
Breach of Implied Warranty of Merchantability  
Miss. Code §§ 75-2-314 and 75-2A-212  
(On Behalf of the Mississippi State Class)**

28. ~~Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set forth herein.~~

29. ~~Plaintiffs Denise Wilson, Allan Miles, and Harryette Gosa (for the purposes of this count, "Plaintiffs") bring this claim on behalf of themselves and the Mississippi State Class against all Defendants.~~

30. ~~Defendants are and were at all relevant times "merchant[s]" with respect to motor vehicles under Miss. Code § 75-2-104(1) and "sellers" of motor vehicles under § 75-2-103(1)(d).~~

31. ~~With respect to leases, Defendants are and were at all relevant times "lessors" of motor vehicles under Miss. Code § 75-2A-103(1)(p).~~

32. ~~The Class Vehicles are and were at all relevant times "goods" within the meaning of Miss. Code §§ 75-2-105(1) and 75-2A-103(1)(h).~~

33. ~~A warranty that the Class Vehicles were in merchantable condition and fit for the ordinary purpose for which vehicles are used is implied by law pursuant to Miss. Code §§ 75-2-314 and 75-2A-212.~~

34. ~~The Class Vehicles did not comply with the implied warranty of merchantability because, at the time of sale and at all times thereafter, they were defective and not in merchantable condition, would not pass without objection in the trade, and were not fit for the ordinary purpose for which vehicles were used. Specifically, the Class Vehicles suffer from the SDM Calibration Defect, which may cause the airbags and seatbelt to fail to deploy during an accident, rendering the Class Vehicles inherently defective and dangerous.~~

35. ~~Defendants were provided reasonable notice of these issues by way of a letter sent by Plaintiffs on August 20, 2021, as well as numerous public NHTSA complaints and individual lawsuits, as detailed herein.~~

36. ~~Alternatively, any opportunity to cure the breach is unnecessary and futile.~~

37. ~~As a direct and proximate result of Defendants' breach of the implied warranty of merchantability, Plaintiffs and Mississippi State Class members have been damaged in an amount to be proven at trial.~~

# **18. Missouri**

## **MISSOURI COUNT I:**

### **Violations of the Missouri Merchandising Practices Act**

#### **Mo. Rev. Stat. § 407.010 *et seq.***

#### **(On Behalf of the Missouri State Class)**

1. ~~Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.~~

2. ~~Plaintiff Dolly Price (for the purposes of this count, "Plaintiff") brings this claim on behalf of herself and the Missouri State Class against all Defendants.~~

3. ~~Defendants, Plaintiff, and the Missouri State Class are "persons" within the meaning of Mo. Rev. Stat. § 407.010(5).~~

4. ~~Defendants engaged in "trade" or "commerce" in the State of Missouri within the meaning of Mo. Rev. Stat. § 407.010(7).~~

1           5.——~~The Missouri Merchandising Practices Act (“Missouri MPA”) makes unlawful the~~  
2 ~~“act, use or employment by any person of any deception, fraud, false pretense, misrepresentation,~~  
3 ~~unfair practice, or the concealment, suppression, or omission of any material fact in connection~~  
4 ~~with the sale or advertisement of any merchandise.” Mo. Rev. Stat. § 407.020.~~

5           6.——~~In the course of their business, Defendants violated the Missouri MPA by~~  
6 ~~knowingly and intentionally misrepresenting, omitting, concealing, and/or failing to disclose~~  
7 ~~material facts regarding the reliability, safety, and performance of the Class Vehicles, as detailed~~  
8 ~~above.~~

9           7.——~~Specifically, by misrepresenting the Class Vehicles as safe and/or free from~~  
10 ~~defects, and by failing to disclose and actively concealing the dangers and risk posed by the Class~~  
11 ~~Vehicles and/or the SDM Calibration Defect, Defendants engaged in unfair methods of~~  
12 ~~competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the~~  
13 ~~conduct of any trade or commerce, as prohibited by Mo. Rev. Stat. § 407.020.~~

14           8.——~~Defendants’ unfair or deceptive acts or practices, including misrepresentations,~~  
15 ~~concealments, omissions, and/or suppressions of material facts, had a tendency or capacity to~~  
16 ~~mislead and create a false impression in consumers, and were likely to and did in fact deceive~~  
17 ~~reasonable consumers, including Plaintiff and Missouri State Class members, about the true~~  
18 ~~safety and reliability of Class Vehicles, the quality of the Class Vehicles, and the true value of the~~  
19 ~~Class Vehicles.~~

20           9.——~~Defendants’ scheme and concealment of the SDM Calibration Defect and true~~  
21 ~~characteristics of the passenger safety systems in the Class Vehicles were material to Plaintiff and~~  
22 ~~Missouri State Class members, as the Defendants intended. Had they known the truth, Plaintiff~~  
23 ~~and Missouri State Class members would not have purchased or leased the Class Vehicles, or~~  
24 ~~would have paid significantly less for them.~~

25           10.——~~Plaintiff and Missouri State Class members had no way of discerning that~~  
26 ~~Defendants’ representations were false and misleading and/or otherwise learning the facts that~~  
27 ~~Defendants had concealed or failed to disclose. Plaintiff and Missouri State Class members did~~  
28 ~~not, and could not, unravel Defendants’ deception on their own.~~



11. ~~Defendants had an ongoing duty to Plaintiff and Missouri State Class members to refrain from unfair or deceptive practices under the Missouri MPA in the course of their business. Specifically, Defendants owed Plaintiff and Missouri State Class members a duty to disclose all the material facts concerning the SDM Calibration Defect in the Class Vehicles because they possessed exclusive knowledge, they intentionally concealed the defect from Plaintiff and Missouri State Class members, and/or they made misrepresentations that were misleading because they were contradicted by withheld facts.~~

12. ~~Defendants' violations present a continuing risk to Plaintiff and Missouri State Class members, as well as to the general public. Defendants' unlawful acts and practices complained of herein affect the public interest.~~

13. ~~Plaintiff and Missouri State Class members suffered ascertainable loss and actual damages as a direct and proximate result of Defendants' misrepresentations and concealment of and failure to disclose material information. Defendants had an ongoing duty to all their customers to refrain from unfair and deceptive practices under the Missouri MPA. All owners of Class Vehicles suffered ascertainable loss as a result of Defendants' deceptive and unfair acts and practices made in the course of Defendants' business.~~

14. ~~As a direct and proximate result of Defendants' violations of the Missouri MPA, Plaintiff and Missouri State Class members have suffered injury in fact and/or actual damage.~~

15. ~~Defendants are liable to Plaintiff and the Missouri State Class for damages in amounts to be proven at trial, including attorneys' fees, costs, and punitive damages, as well as injunctive relief enjoining Defendants' unfair and deceptive practices, and any other just and proper relief under Mo. Rev. Stat. § 407.025.~~

**MISSOURI COUNT II:  
Breach of Express Warranty  
Mo. Stat. §§ 400.2-313 and 400.2A-210  
(On Behalf of the Missouri State Class)**

16. ~~Plaintiffs re-allege and incorporate by reference all preceding allegations as though fully set forth herein.~~

17. ~~Plaintiff Dolly Price (for the purposes of this count, “Plaintiff”) brings this claim on behalf of herself and the Missouri State Class against all Defendants.~~

18. ~~Defendants are and were at all relevant times “merchant[s]” with respect to motor vehicles under Mo. Stat. § 400.2-104(1) and “sellers” of motor vehicles under § 400.2-103(1)(d).~~

19. ~~With respect to leases, Defendants are and were at all relevant times “lessors” of motor vehicles under Mo. Stat. § 400.2A-103(1)(p).~~

20. ~~The Class Vehicles are and were at all relevant times “goods” within the meaning of Mo. Stat. § 400.2-105(1) and Mo. Stat. § 400.2A-103(1)(h).~~

21. ~~In connection with the purchase or lease of Class Vehicles, the Defendants provided Plaintiff and Missouri State Class members with written express warranties covering the repair or replacement of components that are defective in materials or workmanship.~~

22. ~~Defendants’ warranties formed the basis of the bargain that was reached when Plaintiff and Missouri State Class members unknowingly purchased or leased Class Vehicles that came equipped with the SDM Calibration Defect.~~

23. ~~However, Defendants knew or should have known that the warranties were false and/or misleading. Specifically, Defendants were aware of the SDM Calibration Defect in the Class Vehicles, which made the vehicles inherently defective and dangerous at the time that they were sold and leased to Plaintiff and Missouri State Class members.~~

24. ~~Plaintiff and Missouri State Class members reasonably relied on the Defendants’ express warranties when purchasing or leasing their Class Vehicles.~~

25. ~~Defendants knowingly breached their express warranties to repair defects in materials and workmanship by failing to repair the SDM Calibration Defect in the Class Vehicles. Defendants also breached their express warranties by providing a product containing defects that were never disclosed to Plaintiff and Missouri State Class members.~~

26. ~~Plaintiff and Missouri State Class members have provided the Defendants with reasonable notice and opportunity to cure the breaches of their express warranties by way of letter sent by Plaintiffs on August 20, 2021. Defendants are further on notice due to numerous public NHTSA complaints and individual lawsuits, as detailed herein.~~

1 ~~27.——Alternatively, any opportunity to cure the breach is unnecessary and futile.~~

2 ~~28.——As a direct and proximate result of the Defendants’ breach of express warranties,~~  
 3 ~~Plaintiff and Missouri State Class members have been damaged in an amount to be proven at trial.~~

4 **MISSOURI COUNT III:**  
 5 **Breach of Implied Warranty of Merchantability**  
 6 **Mo. Stat. §§ 400.2-314 and 400.2A-212**  
 7 **(On Behalf of the Missouri State Class)**

8 ~~29.——Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set~~  
 9 ~~forth herein.~~

10 ~~30.——Plaintiff Dolly Price (for the purposes of this count, “Plaintiff”) brings this claim~~  
 11 ~~on behalf of himself and the Missouri State Class against all Defendants.~~

12 ~~31.——Defendants are and were at all relevant times “merchant[s]” with respect to motor~~  
 13 ~~vehicles under Mo. Stat. § 400.2-104(1) and “sellers” of motor vehicles under § 400.2-103(1)(d).~~

14 ~~32.——With respect to leases, Defendants are and were at all relevant times “lessors” of~~  
 15 ~~motor vehicles under Mo. Stat. § 400.2A-103(1)(p).~~

16 ~~33.——The Class Vehicles are and were at all relevant times “goods” within the meaning~~  
 17 ~~of Mo. Stat. § 400.2-105(1) and Mo. Stat. § 400.2A-103(1)(h).~~

18 ~~34.——A warranty that the Class Vehicles were in merchantable condition and fit for the~~  
 19 ~~ordinary purpose for which vehicles are used is implied by law pursuant to Mo. Stat. § 400.2-314~~  
 20 ~~and Mo. Stat. § 400.2A-212.~~

21 ~~35.——The Class Vehicles did not comply with the implied warranty of merchantability~~  
 22 ~~because, at the time of sale and at all times thereafter, they were defective and not in~~  
 23 ~~merchantable condition, would not pass without objection in the trade, and were not fit for the~~  
 24 ~~ordinary purpose for which vehicles were used. Specifically, the Class Vehicles suffer from the~~  
 25 ~~SDM Calibration Defect, which may cause the airbags and seatbelt to fail to deploy during an~~  
 26 ~~accident, rendering the Class Vehicles inherently defective and dangerous.~~

27 ~~36.——Defendants were provided reasonable notice of these issues by way of a letter sent~~  
 28 ~~by Plaintiffs on August 20, 2021, as well as numerous public NHTSA complaints and individual~~  
 29 ~~lawsuits, as detailed herein.~~

37. ~~Alternatively, any opportunity to cure the breach is unnecessary and futile.~~

38. ~~As a direct and proximate result of Defendants' breach of the implied warranty of merchantability, Plaintiff and Missouri State Class members have been damaged in an amount to be proven at trial.~~

**19. Nevada**

**NEVADA COUNT I:  
Violations of the Nevada Deceptive Trade Practices Act  
Nev. Rev. Stat. § 598.0903 *et seq.*  
(On Behalf of the Nevada State Class)**

1. ~~Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.~~

2. ~~Plaintiffs ShaVon Keith and Kevin Hopkins (for the purposes of this count, "Plaintiffs") bring this claim on behalf of themselves and the Nevada State Class against all Defendants.~~

3. ~~The Nevada Deceptive Trade Practices Act ("Nevada DTPA"), Nev. Rev. Stat. § 598.0903, *et seq.* prohibits deceptive trade practices. Nev. Rev. Stat. § 598.0915 provides that a person engages in a "deceptive trade practice" if, in the course of business or occupation, the person: "5. Knowingly makes a false representation as to the characteristics, ingredients, uses, benefits, alterations or quantities of goods or services for sale or lease or a false representation as to the sponsorship, approval, status, affiliation or connection of a person therewith"; "7. Represents that goods or services for sale or lease are of a particular standard, quality or grade, or that such goods are of a particular style or model, if he or she knows or should know that they are of another standard, quality, grade, style or model"; "9. Advertises goods or services with intent not to sell or lease them as advertised"; or "15. Knowingly makes any other false representation in a transaction."~~

4. ~~In the course of their business, Defendants violated the Nevada DTPA by knowingly and intentionally misrepresenting, omitting, concealing, and/or failing to disclose material facts regarding the reliability, safety, and performance of the Class Vehicles, as detailed above.~~

1           ~~5.——Specifically, by misrepresenting the Class Vehicles as safe and/or free from~~  
2 ~~defects, and by failing to disclose and actively concealing the dangers and risk posed by the Class~~  
3 ~~Vehicles and/or the SDM Calibration Defect, Defendants engaged in unfair methods of~~  
4 ~~competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the~~  
5 ~~conduct of any trade or commerce, as prohibited by Nev. Rev. Stat. § 598.0915.~~

6           ~~6.——Defendants’ unfair or deceptive acts or practices, including misrepresentations,~~  
7 ~~concealments, omissions, and/or suppressions of material facts, had a tendency or capacity to~~  
8 ~~mislead and create a false impression in consumers, and were likely to and did in fact deceive~~  
9 ~~reasonable consumers, including Plaintiffs and Nevada State Class members, about the true safety~~  
10 ~~and reliability of Class Vehicles, the quality of the Class Vehicles, and the true value of the Class~~  
11 ~~Vehicles.~~

12           ~~7.——Defendants’ scheme and concealment of the SDM Calibration Defect and true~~  
13 ~~characteristics of the passenger safety systems in the Class Vehicles were material to Plaintiffs~~  
14 ~~and Nevada State Class members, as the Defendants intended. Had they known the truth,~~  
15 ~~Plaintiffs and Nevada State Class members would not have purchased or leased the Class~~  
16 ~~Vehicles, or would have paid significantly less for them.~~

17           ~~8.——Plaintiffs and Nevada State Class members had no way of discerning that~~  
18 ~~Defendants’ representations were false and misleading and/or otherwise learning the facts that~~  
19 ~~Defendants had concealed or failed to disclose. Plaintiffs and Nevada State Class members did~~  
20 ~~not, and could not, unravel Defendants’ deception on their own.~~

21           ~~9.——Defendants had an ongoing duty to Plaintiffs and Nevada State Class members to~~  
22 ~~refrain from unfair or deceptive practices under the Nevada DTPA in the course of their business.~~  
23 ~~Specifically, Defendants owed Plaintiffs and Nevada State Class members a duty to disclose all~~  
24 ~~the material facts concerning the SDM Calibration Defect in the Class Vehicles because they~~  
25 ~~possessed exclusive knowledge, they intentionally concealed the defect from Plaintiffs and~~  
26 ~~Nevada State Class members, and/or they made misrepresentations that were misleading because~~  
27 ~~they were contradicted by withheld facts.~~

10. ~~Defendants' violations present a continuing risk to Plaintiffs and Nevada State Class members, as well as to the general public. Defendants' unlawful acts and practices complained of herein affect the public interest.~~

11. ~~Nevada State Class members suffered ascertainable loss and actual damages as a direct and proximate result of Defendants' misrepresentations and concealment of and failure to disclose material information. Defendants had an ongoing duty to all their customers to refrain from unfair and deceptive practices under the Nevada DTPA. All owners of Class Vehicles suffered ascertainable loss as a result of Defendants' deceptive and unfair acts and practices made in the course of Defendants' business.~~

12. ~~Pursuant to Nev. Rev. Stat. §§ 41.600, Plaintiffs and Nevada State Class members seek an order enjoining the Defendants' unfair or deceptive acts or practices and awarding damages and any other just and proper relief available under the Nevada DTPA.~~

**~~NEVADA COUNT II:  
Breach of Express Warranty  
N.R.S. §§ 104.2313 and 104A.2210  
(On Behalf of the Nevada State Class)~~**

13. ~~Plaintiffs re-allege and incorporate by reference all preceding allegations as though fully set forth herein.~~

14. ~~Plaintiffs ShaVon Keith and Kevin Hopkins (for the purposes of this count, "Plaintiffs") bring this claim on behalf of themselves and the Nevada State Class against all Defendants.~~

15. ~~Defendants are and were at all relevant times "merchant[s]" with respect to motor vehicles under N.R.S. § 104.2104(1) and "sellers" of motor vehicles under § 104.2103(1)(c).~~

16. ~~With respect to leases, Defendants are and were at all relevant times "lessors" of motor vehicles under N.R.S. § 104A.2103(1)(p).~~

17. ~~The Class Vehicles are and were at all relevant times "goods" within the meaning of N.R.S. §§ 104.2105(1) and 104A.2103(1)(h).~~

18. ~~In connection with the purchase or lease of Class Vehicles, Defendants provided Plaintiffs and Nevada State Class members with written express warranties covering the repair or replacement of components that are defective in materials or workmanship.~~

19. ~~Defendants' warranties formed the basis of the bargain that was reached when Plaintiffs and Nevada State Class members unknowingly purchased or leased Class Vehicles that came equipped with the SDM Calibration Defect.~~

20. ~~However, Defendants knew or should have known that the warranties were false and/or misleading. Specifically, Defendants were aware of the SDM Calibration Defect in the Class Vehicles, which made the vehicles inherently defective and dangerous at the time that they were sold and leased to Plaintiffs and Nevada State Class members.~~

21. ~~Plaintiffs and Nevada State Class members reasonably relied on the Defendants' express warranties when purchasing or leasing their Class Vehicles.~~

22. ~~Defendants knowingly breached their express warranties to repair defects in materials and workmanship by failing to repair the SDM Calibration Defect in the Class Vehicles. Defendants also breached their express warranties by providing a product containing defects that were never disclosed to Plaintiffs and Nevada State Class members.~~

23. ~~Plaintiffs and Nevada State Class members have provided the Defendants with reasonable notice and opportunity to cure the breaches of their express warranties by way of letter sent by Plaintiffs on August 20, 2021. Defendants are further on notice due to numerous public NHTSA complaints and individual lawsuits, as detailed herein.~~

24. ~~Alternatively, any opportunity to cure the breach is unnecessary and futile.~~

25. ~~As a direct and proximate result of the Defendants' breach of express warranties, Plaintiffs and Nevada State Class members have been damaged in an amount to be proven at trial.~~

### **NEVADA COUNT III:**

#### **Breach of Implied Warranty of Merchantability**

**N.R.S. §§ 104.2314 and 104A.2212**

**(On Behalf of the Nevada State Class)**

26. ~~Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set forth herein.~~



1           ~~27.—Plaintiffs ShaVon Keith and Kevin Hopkins (for the purposes of this count,~~  
2           ~~“Plaintiffs”) bring this claim on behalf of themselves and the Nevada State Class against all~~  
3           ~~Defendants.~~

4           ~~28.—Defendants are and were at all relevant times “merchant[s]” with respect to motor~~  
5           ~~vehicles under N.R.S. § 104.2104(1) and “sellers” of motor vehicles under § 104.2103(1)(c).~~

6           ~~29.—With respect to leases, Defendants are and were at all relevant times “lessors” of~~  
7           ~~motor vehicles under N.R.S. § 104A.2103(1)(p).~~

8           ~~30.—The Class Vehicles are and were at all relevant times “goods” within the meaning~~  
9           ~~of N.R.S. §§ 104.2105(1) and 104A.2103(1)(h).~~

10           ~~31.—A warranty that the Class Vehicles were in merchantable condition and fit for the~~  
11           ~~ordinary purpose for which vehicles are used is implied by law pursuant to N.R.S. §§ 104.2314~~  
12           ~~and 104A.2212.~~

13           ~~32.—The Class Vehicles did not comply with the implied warranty of merchantability~~  
14           ~~because, at the time of sale and at all times thereafter, they were defective and not in~~  
15           ~~merchantable condition, would not pass without objection in the trade, and were not fit for the~~  
16           ~~ordinary purpose for which vehicles were used. Specifically, the Class Vehicles suffer from the~~  
17           ~~SDM Calibration Defect, which may cause the airbags and seatbelt to fail to deploy during an~~  
18           ~~accident, rendering the Class Vehicles inherently defective and dangerous.~~

19           ~~33.—Defendants were provided reasonable notice of these issues by way of a letter sent~~  
20           ~~by Plaintiffs on August 20, 2021, as well as numerous public NHTSA complaints and individual~~  
21           ~~lawsuits, as detailed herein.~~

22           ~~34.—Alternatively, any opportunity to cure the breach is unnecessary and futile.~~

23           ~~35.—As a direct and proximate result of Defendants’ breach of the implied warranty of~~  
24           ~~merchantability, Plaintiffs and Nevada State Class members have been damaged in an amount to~~  
25           ~~be proven at trial.~~

~~20. New Jersey~~

~~NEW JERSEY COUNT I:  
Violations of the New Jersey Consumer Fraud Act  
N.J. Stat. Ann. § 56:8-1 et seq.  
(On Behalf of the New Jersey State Class)~~

~~1. Plaintiffs incorporate by reference all allegations in this Complaint as though fully set forth herein.~~

~~2. Plaintiffs Jorge L. Orihuela and Lee Ford (for the purposes of this count, “Plaintiffs”) bring this claim on behalf of themselves and the New Jersey State Class against all Defendants.~~

~~3. Plaintiffs and New Jersey State Class members and Defendants are “persons” under the New Jersey Consumer Fraud Act (“New Jersey CFA”), N.J. Stat. § 56:8-1(d).~~

~~4. Defendants engaged in “sales” of “merchandise” within the meaning of N.J. Stat. § 56:8-1(c), (e). Defendants’ actions as set forth herein occurred in the conduct of trade or commerce.~~

~~5. The New Jersey CFA makes unlawful “[t]he act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing concealment, suppression, or omission of any material fact with the intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise or real estate, or with the subsequent performance of such person as aforesaid, whether or not any person has in fact been misled, deceived or damaged thereby.” N.J. Stat. § 56:8-2.~~

~~6. In the course of their business, Defendants concealed and suppressed material facts concerning the Class Vehicles. Specifically, Defendants failed to disclose and actively concealed the dangers and risk posed by the Class Vehicles and/or the SDM Calibration Defect.~~

~~7. Defendants thus violated the Act by, at minimum: representing that Class Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that Class Vehicles are of a particular standard, quality, and grade when they are not; advertising Class Vehicles with the intent not to sell or lease them as advertised; and representing that the subject of~~

~~a transaction involving Class Vehicles has been supplied in accordance with a previous representation when it has not.~~

~~8. Defendants intentionally and knowingly misrepresented material facts regarding the Class Vehicles with intent to mislead Plaintiffs and the New Jersey State Class.~~

~~9. Plaintiffs and New Jersey State Class members had no way of discerning that Defendants' representations were false and misleading and/or otherwise learning the facts the Defendants had concealed or failed to disclose. Plaintiffs and New Jersey State Class members did not, and could not, unravel the Defendants' deception on their own.~~

~~10. Defendants knew or should have known that their conduct violated the New Jersey CFA.~~

~~11. Defendants owed Plaintiffs and the New Jersey State Class a duty to disclose all the material facts concerning the SDM Calibration Defect in the Class Vehicles because Defendants:~~

~~A. possessed exclusive knowledge that they were manufacturing, selling, and distributing vehicles throughout the United States that did not perform as advertised;~~

~~B. intentionally concealed the foregoing from regulators, Plaintiffs, and New Jersey State Class members; and/or~~

~~C. made incomplete representations about the Class Vehicles' safety while purposefully withholding material facts that contradicted these representations.~~

~~12. Defendants' concealment of the true characteristics of the Class Vehicles' safety and SDM Calibration system was material to Plaintiffs and the New Jersey State Class.~~

~~13. Defendants' unfair or deceptive acts or practices were likely to and did in fact deceive regulators and reasonable consumers, including Plaintiffs and the New Jersey State Class, about the true safety of the Class Vehicles, the quality of the Defendants' brands, and the true value of the Class Vehicles.~~

~~14. Defendants' violations present a continuing risk to Plaintiffs and the New Jersey State Class as well as to the general public. Defendants' unlawful acts and practices complained of herein affect the public interest.~~

~~15. Plaintiffs and New Jersey State Class members suffered ascertainable loss and actual damages as a direct and proximate result of Defendants' misrepresentations and concealment of and failure to disclose material information. Defendants had an ongoing duty to all their customers to refrain from unfair and deceptive practices under the New Jersey CFA. All owners and lessees of Class Vehicles suffered ascertainable loss as a result of Defendants' deceptive and unfair acts and practices made in the course of Defendants' business.~~

~~16. As a direct and proximate result of Defendants' violations of the New Jersey CFA, Plaintiffs and the New Jersey State Class have suffered injury in fact and/or actual damage in an amount to be proven at trial, and seek all just and proper remedies, including, but not limited to, actual and statutory damages, treble damages, an order enjoining Defendants' deceptive and unfair conduct, costs and reasonable attorneys' fees under N.J. Stat. § 56:8-19, and all other just and appropriate relief.~~

**NEW JERSEY COUNT II:  
Breach of Express Warranty  
N.J.S. 12A:2-313 and 2A-210  
(On Behalf of the New Jersey State Class)**

~~17. Plaintiffs re-allege and incorporate by reference all preceding allegations as though fully set forth herein.~~

~~18. Plaintiffs Jorge L. Orihuela and Lee Ford (for the purposes of this count, "Plaintiffs") bring this claim on behalf of themselves and the New Jersey State Class against all Defendants.~~

~~19. Defendants are and were at all relevant times "merchant[s]" with respect to motor vehicles under N.J.S. 12A:2-104(1) and "sellers" of motor vehicles under 2-103(1)(d).~~

~~20. With respect to leases, Defendants are and were at all relevant times "lessors" of motor vehicles under N.J.S. 12A:2A-103(1)(p).~~

~~21. The Class Vehicles are and were at all relevant times "goods" within the meaning of N.J.S. 12A:2-105(1) and 2A-103(1)(h).~~

1           ~~22.—In connection with the purchase or lease of each Class Vehicle, Defendants~~  
2 ~~provided Plaintiffs and New Jersey State Class members with written express warranties covering~~  
3 ~~the repair or replacement of components that are defective in materials or workmanship.~~

4           ~~23.—Defendants' warranties formed a basis of the bargain that was reached when~~  
5 ~~Plaintiffs and New Jersey Class members unknowingly purchased or leased Class Vehicles that~~  
6 ~~came equipped with the SDM Calibration Defect.~~

7           ~~24.—However, Defendants knew or should have known that the warranties were false~~  
8 ~~and/or misleading. Specifically, Defendants were aware of the SDM Calibration Defect in the~~  
9 ~~Class Vehicles, which made the vehicles inherently defective and dangerous at the time that they~~  
10 ~~were sold and leased to Plaintiffs and New Jersey State Class members.~~

11           ~~25.—Plaintiffs and New Jersey State Class members reasonably relied on the~~  
12 ~~Defendants' express warranties when purchasing or leasing their Class Vehicles.~~

13           ~~26.—Defendants knowingly breached their express warranties to repair defects in~~  
14 ~~materials and workmanship by failing to repair the SDM Calibration Defect in the Class Vehicles.~~  
15 ~~Defendants also breached their express warranties by providing a product containing defects that~~  
16 ~~were never disclosed to Plaintiffs and New Jersey State Class members.~~

17           ~~27.—Plaintiffs and New Jersey State Class members have provided the Defendants with~~  
18 ~~reasonable notice and opportunity to cure the breaches of their express warranties by way of letter~~  
19 ~~sent by Plaintiffs on August 20, 2021. Defendants are further on notice due to numerous public~~  
20 ~~NHTSA complaints and individual lawsuits, as detailed herein.~~

21           ~~28.—Alternatively, any opportunity to cure the breach is unnecessary and futile.~~  
22 ~~Accordingly, recovery by Plaintiffs and New Jersey State Class members is not restricted to the~~  
23 ~~limited warranty promising to repair and correct Defendants' defect in materials and~~  
24 ~~workmanship, and they seek all remedies as allowed by law.~~

25           ~~29.—As a direct and proximate result of Defendants' breach of express warranties,~~  
26 ~~Plaintiffs and New Jersey State Class members have been damaged in an amount to be~~  
27 ~~determined at trial.~~

**~~NEW JERSEY COUNT III:~~**  
**~~Breach of Implied Warranty of Merchantability~~**  
**~~N.J.S. 12A:2-314 and 2A-212~~**  
**~~(On Behalf of the New Jersey State Class)~~**

~~30. Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set forth herein.~~

~~31. Plaintiffs Jorge L. Orihuela and Lee Ford (for the purposes of this count, “Plaintiffs”) bring this claim on behalf of themselves and the New Jersey State Class against all Defendants.~~

~~32. Defendants are and were at all relevant times “merchant[s]” with respect to motor vehicles under N.J.S. 12A:2-104(1) and “sellers” of motor vehicles under 2-103(1)(d).~~

~~33. With respect to leases, Defendants are and were at all relevant times “lessors” of motor vehicles under N.J.S. 12A:2A-103(1)(p).~~

~~34. The Class Vehicles are and were at all relevant times “goods” within the meaning of N.J.S. 12A:2-105(1) and 2A-103(1)(h).~~

~~35. A warranty that the Class Vehicles were in merchantable condition and fit for the ordinary purpose for which vehicles are used is implied by law pursuant to N.J.S. 12A:2-314 and 2A-212.~~

~~36. The Class Vehicles did not comply with the implied warranty of merchantability because, at the time of sale and at all times thereafter, they were defective and not in merchantable condition, would not pass without objection in the trade, and were not fit for the ordinary purpose for which vehicles were used. Specifically, the Class Vehicles suffer from the SDM Calibration Defect, which may cause the airbags and seatbelt to fail to deploy during an accident, rendering the Class Vehicles inherently defective and dangerous.~~

~~37. Defendants were provided reasonable notice of these issues by way of a letter sent by Plaintiffs on August 20, 2021, as well as numerous public NHTSA complaints and individual lawsuits, as detailed herein.~~

~~38. Alternatively, any opportunity to cure the breach is unnecessary and futile.~~

~~39. As a direct and proximate result of Defendants' breach of the implied warranty of merchantability, Plaintiffs and New Jersey State Class members have been damaged in an amount to be proven at trial.~~

~~21. New York~~

~~NEW YORK COUNT I:  
Violations of the New York General Business Law § 349  
N.Y. Gen. Bus. Law § 349  
(On Behalf of the New York State Class)~~

~~1. Plaintiffs incorporate by reference all allegations in this Complaint as though fully set forth herein.~~

~~2. Plaintiffs Adam Brown, Patrick O'Connor, and Frank Pignone (for the purposes of this count, "Plaintiffs") bring this claim on behalf of themselves and the New York State Class against all Defendants.~~

~~3. The New York State Class members and Defendants are "persons" under N.Y. Gen. Bus. Law § 349(h), the New York Deceptive Acts and Practices Act ("NY DAPA").~~

~~4. Defendants' actions as set forth herein occurred in the conduct of trade or commerce under the NY DAPA.~~

~~5. The NY DAPA makes unlawful "[d]eceptive acts or practices in the conduct of any business, trade or commerce." N.Y. Gen. Bus. Law § 349. Defendants' conduct, as set forth herein, constitutes deceptive acts or practices under this section.~~

~~6. In the course of their business, Defendants concealed and suppressed material facts concerning the Class Vehicles. Specifically, Defendants failed to disclose and actively concealed the dangers and risk posed by the Class Vehicles and/or the SDM Calibration Defect.~~

~~7. Defendants thus violated the Act by, at minimum: representing that Class Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that Class Vehicles are of a particular standard, quality, and grade when they are not; advertising Class Vehicles with the intent not to sell or lease them as advertised; and representing that the subject of a transaction involving Class Vehicles has been supplied in accordance with a previous representation when it has not.~~



1           ~~8. Defendants intentionally and knowingly misrepresented material facts regarding~~  
 2 ~~the Class Vehicles with intent to mislead the New York State Class.~~

3           ~~9. Defendants knew or should have known that their conduct violated the NY DAPA.~~

4           ~~10. Defendants owed the New York State Class a duty to disclose the true nature of~~  
 5 ~~the Class Vehicles, because Defendants:~~

6                 ~~a. possessed exclusive knowledge that they were manufacturing, selling, and~~  
 7 ~~distributing vehicles throughout the United States that did not perform as advertised;~~

8                 ~~b. intentionally concealed the foregoing from regulators and New York State~~  
 9 ~~Class members; and/or~~

10                ~~c. made incomplete representations about the Class Vehicles' safety while~~  
 11 ~~purposefully withholding material facts that contradicted these representations.~~

12           ~~11. Defendants' concealment of the true characteristics of the Class Vehicles' true was~~  
 13 ~~material to the New York State Class.~~

14           ~~12. Defendants' unfair or deceptive acts or practices were likely to and did in fact~~  
 15 ~~deceive regulators and reasonable consumers, including Plaintiffs and the New York State Class,~~  
 16 ~~about the true safety of the Class Vehicles, the quality of the Defendants' brands, and the true~~  
 17 ~~value of the Class Vehicles.~~

18           ~~13. Defendants' violations present a continuing risk to Plaintiffs and the New York~~  
 19 ~~State Class as well as to the general public. Defendants' unlawful acts and practices complained~~  
 20 ~~of herein affect the public interest.~~

21           ~~14. Plaintiffs and New York State Class members suffered ascertainable loss and~~  
 22 ~~actual damages as a direct and proximate result of Defendants' misrepresentations and~~  
 23 ~~concealment of and failure to disclose material information. Defendants had an ongoing duty to~~  
 24 ~~all their customers to refrain from unfair and deceptive practices under the NY DAPA. All~~  
 25 ~~owners of Class Vehicles suffered ascertainable loss as a result of Defendants' deceptive and~~  
 26 ~~unfair acts and practices made in the course of Defendants' business.~~

27           ~~15. As a direct and proximate result of Defendants' violations of the NY DAPA, New~~  
 28 ~~York State Class members have suffered injury in fact and/or actual damage.~~

16. — As a result of the foregoing willful, knowing, and wrongful conduct of Defendants, Plaintiffs and New York State Class members have been damaged in an amount to be proven at trial, and seek all just and proper remedies, including but not limited to actual damages or \$50, whichever is greater, treble damages up to \$1,000, punitive damages to the extent available under the law, reasonable attorneys' fees and costs, an order enjoining Defendants' deceptive and unfair conduct, and all other just and appropriate relief available under the NY DAPA.

**NEW YORK COUNT II:  
Violations of the New York General Business Law § 350  
N.Y. Gen. Bus. Law § 350  
(On Behalf of the New York State Class)**

17. — Plaintiffs incorporate by reference all allegations in this Complaint as though fully set forth herein.

18. — Plaintiffs Adam Brown, Patrick O'Connor, and Frank Pignone (for the purposes of this count, "Plaintiffs") bring this claim on behalf of themselves and the New York State Class against all Defendants.

19. — Defendants were engaged in the "conduct of business, trade or commerce," within the meaning of N.Y. Gen. Bus. Law § 350, the New York False Advertising Act ("NY FAA")

20. — The NY FAA makes unlawful "[f]alse advertising in the conduct of any business, trade or commerce." N.Y. Gen. Bus. Law § 350. False advertising includes "advertising, including labeling, of a commodity . . . if such advertising is misleading in a material respect," taking into account "the extent to which the advertising fails to reveal facts material in light of . . . representations [made] with respect to the commodity . . . ." N.Y. Gen. Bus. Law § 350-a.

21. — Defendants caused to be made or disseminated through New York, through advertising, marketing, and other publications, statements and omissions that were untrue or misleading, and that were known by Defendants, or that through the exercise of reasonable care should have been known by Defendants, to be untrue and misleading to the New York State Class.

22. — Defendants made numerous material misrepresentations and omissions of fact with intent to mislead and deceive concerning the Class Vehicles, particularly concerning the safety of

~~the Class Vehicles. Defendants intentionally and knowingly misrepresented material facts regarding the Class Vehicles with intent to mislead the New York State Class. The misrepresentations and omissions set forth above were material and likely to deceive a reasonable consumer.~~

~~23.—Defendants’ false advertising was likely to and did in fact deceive regulators and reasonable consumers, including the New York State Class, about the safety of the Class Vehicles, the quality of Defendants brand and the true value of the Class Vehicles.~~

~~24.—Defendants’ violations of the NY FAA present a continuing risk to New York State Class members and to the general public. Defendants’ deceptive acts and practices affect the public interest.~~

~~25.—New York State Class members have suffered injury in fact and/or actual damages and ascertainable loss as a direct and proximate result of the Defendants’ false advertising in violation of the NY FAA.~~

~~26.—The New York State Class seeks monetary relief against Defendants measured as the greater of (a) actual damages in an amount to be determined at trial, and (b) statutory damages in the amount of \$500 each for New York State Class members. Because Defendants’ conduct was committed willingly and knowingly, New York State Class members are entitled to recover three times actual damages, up to \$10,000.~~

~~27.—The New York State Class also seeks an order enjoining Defendants’ false advertising, attorneys’ fees, and any other just and proper relief under N.Y. Gen. Bus. Law § 350.~~

**~~NEW YORK COUNT III:  
Breach of Express Warranty  
N.Y. U.C.C. Law §§ 2-313 and 2A-210  
(On Behalf of the New York State Class)~~**

~~28.—Plaintiffs re-allege and incorporate by reference all preceding allegations as though fully set forth herein.~~

~~29.—Plaintiffs Adam Brown, Patrick O’Connor, and Frank Pignone (for the purposes of this count, “Plaintiffs”) bring this claim on behalf of themselves and the New York State Class against all Defendants.~~

1           30. ~~Defendants are and were at all relevant times “merchant[s]” with respect to motor~~  
2 ~~vehicles under N.Y. UCC Law § 2-104(1) and “sellers” of motor vehicles under § 2-103(1)(d).~~

3           31. ~~With respect to leases, Defendants are and were at all relevant times “lessors” of~~  
4 ~~motor vehicles under N.Y. UCC Law § 2A-103(1)(p).~~

5           32. ~~The Class Vehicles are and were at all relevant times “goods” within the meaning~~  
6 ~~of N.Y. UCC Law §§ 2-105(1) and 2A-103(1)(h).~~

7           33. ~~In connection with the purchase or lease of each Class Vehicle, Defendants~~  
8 ~~provided Plaintiffs and New Jersey State Class members with written express warranties covering~~  
9 ~~the repair or replacement of components that are defective in materials or workmanship.~~

10           34. ~~Defendants’ warranties formed a basis of the bargain that was reached when~~  
11 ~~consumers purchased or leased Class Vehicles.~~

12           35. ~~However, Defendants knew or should have known that the warranties were false~~  
13 ~~and/or misleading. Specifically, Defendants were aware of the SDM Calibration Defect in the~~  
14 ~~Class Vehicles, which made the vehicles inherently defective and dangerous at the time that they~~  
15 ~~were sold and leased to Plaintiffs and New York State Class members.~~

16           36. ~~Defendants knowingly breached their express warranties to repair defects in~~  
17 ~~materials and workmanship by failing to repair the SDM Calibration Defect in the Class Vehicles.~~  
18 ~~Defendants also breached their express warranties by providing a product containing defects that~~  
19 ~~were never disclosed to Plaintiffs and New York State Class members.~~

20           37. ~~Affording Defendants a reasonable opportunity to cure their breach of written~~  
21 ~~warranties would be unnecessary and futile.~~

22           38. ~~Furthermore, the limited warranty promising to repair and correct Defendants’~~  
23 ~~defect in materials and workmanship fails in its essential purpose because the contractual remedy~~  
24 ~~is insufficient to make New York State Class members whole and because Defendants have failed~~  
25 ~~and/or have refused to adequately provide the promised remedies within a reasonable time.~~

26           39. ~~Accordingly, recovery by New York State Class members is not restricted to the~~  
27 ~~limited warranty promising to repair and correct Defendants’ defect in materials and~~  
28 ~~workmanship, and they seek all remedies as allowed by law.~~

40. ~~Plaintiffs and New Jersey State Class members have provided the Defendants with reasonable notice and opportunity to cure the breaches of their express warranties by way of letter sent by Plaintiffs on August 20, 2021. Defendants are further on notice due to numerous public NHTSA complaints and individual lawsuits, as detailed herein.~~

41. ~~As a direct and proximate result of Defendants' breach of express warranties, New York State Class members have been damaged in an amount to be determined at trial.~~

**~~NEW YORK COUNT IV:  
Breach of Implied Warranty of Merchantability  
N.Y. U.C.C. Law §§ 2-314 and 2A-212  
(On Behalf of the New York State Class)~~**

42. ~~Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set forth herein.~~

43. ~~Plaintiffs Adam Brown, Patrick O'Connor, and Frank Pignone (for the purposes of this count, "Plaintiffs") bring this claim on behalf of themselves and the New York State Class against all Defendants.~~

44. ~~Defendants are and were at all relevant times "merchant[s]" with respect to motor vehicles under N.Y. UCC Law § 2-104(1) and "sellers" of motor vehicles under § 2-103(1)(d).~~

45. ~~With respect to leases, Defendants are and were at all relevant times "lessors" of motor vehicles under N.Y. UCC Law § 2A-103(1)(p).~~

46. ~~The Class Vehicles are and were at all relevant times "goods" within the meaning of N.Y. UCC Law §§ 2-105(1) and 2A-103(1)(h).~~

47. ~~A warranty that the Class Vehicles were in merchantable condition and fit for the ordinary purpose for which vehicles are used is implied by law pursuant to N.Y. UCC Law §§ 2-314 and 2A-212.~~

48. ~~The Class Vehicles did not comply with the implied warranty of merchantability because, at the time of sale and at all times thereafter, they were defective and not in merchantable condition, would not pass without objection in the trade, and were not fit for the ordinary purpose for which vehicles were used. Specifically, the Class Vehicles suffer from the~~

~~SDM Calibration Defect, which may cause the airbags and seatbelt to fail to deploy during an accident, rendering the Class Vehicles inherently defective and dangerous.~~

~~49.—Defendants were provided reasonable notice of these issues by way of a letter sent by Plaintiffs on August 20, 2021, as well as numerous public NHTSA complaints and individual lawsuits, as detailed herein.~~

~~50.—Alternatively, any opportunity to cure the breach is unnecessary and futile.~~

~~51.—As a direct and proximate result of Defendants’ breach of the implied warranty of merchantability, New York State Class members have been damaged in an amount to be proven at trial.~~

## ~~22.—North Carolina~~

### ~~**NORTH CAROLINA COUNT VIII: Violations of the North Carolina Unfair and Deceptive Acts and Practices Act N.C. Gen. Stat. § 75-1.1, et seq. (On Behalf of the North Carolina State Class)**~~

~~1.—Plaintiffs reallege and incorporate by reference all preceding allegations as though fully set forth herein.~~

~~2.—Plaintiffs David Casey and Jason Klinger (for the purposes of this count, “Plaintiffs”) bring this claim on behalf of themselves and the North Carolina State Class against all Defendants.~~

~~3.—Plaintiffs and North Carolina State Class members are persons under the North Carolina Unfair and Deceptive Trade Practices Act, N.C. Gen. Stat. § 75-1.1, et seq. (“NCUDTPA”).~~

~~4.—Defendants’ acts and practices complained of herein were performed in the course of Defendants’ trade or business and thus occurred in or affected “commerce,” as defined in N.C. Gen. Stat. § 75-1.1(b).~~

~~5.—The NCUDTPA makes unlawful “[u]nfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce[.]” The NCUDTPA provides a private right of action for any person injured “by reason of any act or thing done by any other person, firm or corporation in violation of” the NCUDTPA. N.C. Gen. Stat. § 75-16.~~

1           6.——~~In the course of their business, Defendants violated the NCUDTPA by knowingly~~  
2 ~~and intentionally misrepresenting, omitting, concealing, and/or failing to disclose material facts~~  
3 ~~regarding the reliability, safety, and performance of the Class Vehicles, as detailed above.~~

4           7.——~~Specifically, by misrepresenting the Class Vehicles as safe and/or free from~~  
5 ~~defects, and by failing to disclose and actively concealing the dangers and risk posed by the Class~~  
6 ~~Vehicles and/or the SDM Calibration Defect, Defendants engaged in the unfair methods of~~  
7 ~~competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting~~  
8 ~~commerce prohibited by N.C. Gen. § 75-16.~~

9           8.——~~Defendants' unfair or deceptive acts or practices, including misrepresentations,~~  
10 ~~concealments, omissions, and/or suppressions of material facts, had a tendency or capacity to~~  
11 ~~mislead and create a false impression in consumers, and were likely to and did in fact deceive~~  
12 ~~reasonable consumers, including Plaintiffs and North Carolina State Class members, about the~~  
13 ~~true safety and reliability of Class Vehicles, the quality of the Class Vehicles, and the true value~~  
14 ~~of the Class Vehicles.~~

15           9.——~~Defendants' scheme and concealment of the SDM Calibration Defect in the Class~~  
16 ~~Vehicles were material to Plaintiffs and North Carolina State Class members, as the Defendants~~  
17 ~~intended. Had they known the truth, Plaintiffs and North Carolina State Class members would not~~  
18 ~~have purchased or leased the Class Vehicles, or would have paid significantly less for them.~~

19           10.——~~Plaintiffs and North Carolina State Class members had no way of discerning that~~  
20 ~~the Defendants' representations were false and misleading and/or otherwise learning the facts that~~  
21 ~~the Defendants had concealed or failed to disclose. Plaintiffs and North Carolina State Class~~  
22 ~~members did not, and could not, unravel the Defendants' deception on their own.~~

23           11.——~~Defendants had an ongoing duty to Plaintiffs and North Carolina State Class~~  
24 ~~members to refrain from unfair or deceptive practices under the NCUDTPA in the course of their~~  
25 ~~business. Specifically, Defendants owed Plaintiffs and North Carolina State Class members a~~  
26 ~~duty to disclose all the material facts concerning the SDM Calibration Defect in the Class~~  
27 ~~Vehicles because they possessed exclusive knowledge, they intentionally concealed the defect~~  
28



1 ~~from Plaintiffs and North Carolina State Class members, and/or they made misrepresentations~~  
 2 ~~that were misleading because they were contradicted by withheld facts.~~

3 ~~12.—Defendants’ violations present a continuing risk to Plaintiffs and North Carolina~~  
 4 ~~State Class members, as well as to the general public. Defendants’ unlawful acts and practices~~  
 5 ~~complained of herein affect the public interest.~~

6 ~~13.—Plaintiffs and the North Carolina State Class suffered ascertainable loss and actual~~  
 7 ~~damages as a direct and proximate result of Defendants’ misrepresentations and concealment of~~  
 8 ~~and failure to disclose material information.~~

9 ~~14.—Pursuant to N.C. Gen. Stat. § 75-16, Plaintiffs and the North Carolina State Class~~  
 10 ~~members and seek all just and proper remedies, including but not limited to treble damages, an~~  
 11 ~~order enjoining Defendants’ deceptive and unfair conduct, court costs and reasonable attorneys’~~  
 12 ~~fees, and any other just and proper relief available.~~

13 **NORTH CAROLINA COUNT II:**  
 14 **Breach of Express Warranty**  
 15 **N.C. Gen. Stat. §§ 25-2-313 and 252A-210**  
 16 **(On Behalf of the North Carolina State Class)**

17 ~~15.—Plaintiffs reallege and incorporate by reference all preceding allegations as though~~  
 18 ~~fully set forth herein.~~

19 ~~16.—Plaintiffs David Casey and Jason Klinger (for the purposes of this count,~~  
 20 ~~“Plaintiffs”) bring this claim on behalf of themselves and the North Carolina State Class against~~  
 21 ~~all Defendants.~~

22 ~~17.—Defendants are and were at all relevant times “merchant[s]” with respect to motor~~  
 23 ~~vehicles under N.C. Gen. Stat. § 25-2-104(1) and “sellers” of motor vehicles under § 25-2-~~  
 24 ~~103(1)(d).~~

25 ~~18.—With respect to leases, Defendants are and were at all relevant times “lessors” of~~  
 26 ~~motor vehicles under N.C. Gen. Stat. § 25-2A-103(1)(p).~~

27 ~~19.—All North Carolina State Class members who purchased Class Vehicles are~~  
 28 ~~“buyers” within the meaning of N.C. Gen. Stat. § 25-2-103(1)(a).~~

1           ~~20.—All North Carolina State Class members who leased Class Vehicles are “lessees”~~  
 2           ~~within the meaning of N.C. Gen. Stat. § 25-2A-103(1)(n).~~

3           ~~21.—The Class Vehicles are and were at all relevant times “goods” within the meaning~~  
 4           ~~of N.C. Gen. Stat. §§ 25-2-105(1) and 25-2A-103(1)(h).~~

5           ~~22.—In connection with the purchase or lease of Class Vehicles, the Defendants~~  
 6           ~~provided Plaintiffs and North Carolina State Class members with written express warranties~~  
 7           ~~covering the repair or replacement of components that are defective in materials or workmanship.~~

8           ~~23.—Defendants’ warranties formed the basis of the bargain that was reached when~~  
 9           ~~Plaintiffs and North Carolina State Class members unknowingly purchased or leased Class~~  
 10           ~~Vehicles that came equipped with the SDM Calibration Defect.~~

11           ~~24.—However, Defendants knew or should have known that the warranties were false~~  
 12           ~~and/or misleading. Specifically, Defendants were aware of the SDM Calibration Defect in the~~  
 13           ~~Class Vehicles, which made the vehicles inherently defective and dangerous at the time that they~~  
 14           ~~were sold and leased to Plaintiffs and North Carolina State Class members.~~

15           ~~25.—Plaintiffs and North Carolina State Class members reasonably relied on the~~  
 16           ~~Defendants’ express warranties when purchasing or leasing their Class Vehicles.~~

17           ~~26.—Defendants knowingly breached their express warranties to repair defects in~~  
 18           ~~materials and workmanship by failing to repair the SDM Calibration Defect in the Class Vehicles.~~  
 19           ~~Defendants also breached their express warranties by providing a product containing defects that~~  
 20           ~~were never disclosed to Plaintiffs and North Carolina State Class members.~~

21           ~~27.—Plaintiffs and North Carolina State Class members have provided the Defendants~~  
 22           ~~with reasonable notice and opportunity to cure the breaches of their express warranties by way of~~  
 23           ~~letter sent by Plaintiffs on August 20, 2021. Defendants are further on notice due to numerous~~  
 24           ~~public NHTSA complaints and individual lawsuits, as detailed herein.~~

25           ~~28.—Alternatively, any opportunity to cure the breach is unnecessary and futile.~~

26           ~~29.—As a direct and proximate result of the Defendants’ breach of express warranties,~~  
 27           ~~Plaintiffs and North Carolina State Class members have been damaged in an amount to be proven~~  
 28           ~~at trial.~~

**~~NORTH CAROLINA COUNT III:  
Breach of Implied Warranty of Merchantability  
N.C. Gen. Stat. §§ 25-2-314 and 252A-212  
(On Behalf of the North Carolina State Class)~~**

~~30.——Plaintiffs reallege and incorporate by reference all preceding allegations as though fully set forth herein.~~

~~31.——Plaintiffs David Casey and Jason Klinger (for the purposes of this count, “Plaintiffs”) bring this claim on behalf of themselves and the North Carolina State Class against all Defendants.~~

~~32.——Defendants are and were at all relevant times “merchant[s]” with respect to motor vehicles under N.C. Gen. Stat. § 25-2-104(1) and “sellers” of motor vehicles under § 25-2-103(1)(d).~~

~~33.——With respect to leases, Defendants are and were at all relevant times “lessors” of motor vehicles under N.C. Gen. Stat. § 25-2A-103(1)(p).~~

~~34.——All North Carolina State Class members who purchased Class Vehicles are “buyers” within the meaning of N.C. Gen. Stat. § 25-2-103(1)(a).~~

~~35.——All North Carolina State Class members who leased Class Vehicles are “lessees” within the meaning of N.C. Gen. Stat. § 25-2A-103(1)(n).~~

~~36.——The Class Vehicles are and were at all relevant times “goods” within the meaning of N.C. Gen. Stat. §§ 25-2-105(1) and 25-2A-103(1)(h).~~

~~37.——A warranty that the Class Vehicles were in merchantable condition and fit for the ordinary purpose for which vehicles are used is implied by law pursuant to N.C. Gen. Stat. §§ 25-2-314 and 25-2A-212.~~

~~38.——The Class Vehicles did not comply with the implied warranty of merchantability because, at the time of sale and at all times thereafter, they were defective and not in merchantable condition, would not pass without objection in the trade, and were not fit for the ordinary purpose for which vehicles were used. Specifically, the Class Vehicles suffer from the SDM Calibration Defect, which may cause the airbags and seatbelt to fail to deploy during an accident, rendering the Class Vehicles inherently defective and dangerous.~~

39. ~~Defendants were provided reasonable notice of these issues by way of a letter sent by Plaintiffs on August 20, 2021. Defendants are further on notice due to numerous public NHTSA complaints and individual lawsuits, as detailed herein.~~

40. ~~Alternatively, any opportunity to cure the breach is unnecessary and futile.~~

41. ~~As a direct and proximate result of Defendants' breach of the implied warranty of merchantability, Plaintiffs and North Carolina State Class members have been damaged in an amount to be proven at trial.~~

### **23. Ohio**

#### **OHIO COUNT I:**

#### **Violations of the Ohio Consumer Sales Practices Act**

**Ohio Rev. Code § 1345.01, *et seq.***

**(On Behalf of the Ohio State Class)**

1. ~~Plaintiffs reallege and incorporate by reference all preceding allegations as though fully set forth herein.~~

2. ~~Plaintiffs Brian Swann, Walter Tooson, and Gregory Juskiewicz (for the purposes of this count, "Plaintiffs") bring this claim on behalf of themselves and the Ohio State Class against all Defendants.~~

3. ~~Defendants, Plaintiffs, and Ohio State Class members are "persons" within the meaning of Ohio Rev. Code § 1345.01(B).~~

4. ~~Each Defendant is a "supplier" as defined by Ohio Rev. Code § 1345.01(C).~~

5. ~~Plaintiffs and the Ohio State Class are "consumers" as that term is defined in Ohio Rev. Code § 1345.01(D), and their purchase and leases of the Class Vehicles are "consumer transactions" within the meaning of Ohio Rev. Code § 1345.01(A).~~

6. ~~Ohio Rev. Code § 1345.02, prohibits unfair or deceptive acts or practices in connection with a consumer transaction.~~

7. ~~In the course of their business, Defendants concealed and suppressed material facts concerning the Class Vehicles and/or the defective SDMs, as detailed above. Specifically, Defendants misrepresented the Class Vehicles as safe and/or free from defects and failed to~~

~~disclose and actively concealed the dangers and risk posed by the Class Vehicles and/or the SDM Calibration Defect, including serious injury or death.~~

~~8. Defendants thus violated the CSPA by, at minimum:~~

~~a. representing that Class Vehicles have characteristics, uses, benefits, and qualities which they do not have;~~

~~b. representing that Class Vehicles are of a particular standard, quality, and grade when they are not; and~~

~~c. representing that the subject of a transaction involving Class Vehicles has been supplied in accordance with a previous representation when it has not.~~

~~Ohio Rev. Code § 1345.02(A), (B)(1), (2), and (4).~~

~~9. Defendants intentionally and knowingly misrepresented material facts regarding the Class Vehicles with intent to mislead Plaintiffs and the Ohio State Class.~~

~~10. Defendants knew or should have known that their conduct violated the Ohio CSPA.~~

~~11. Plaintiffs and Ohio State Class members had no way of discerning that the Defendants' representations were false and misleading and/or otherwise learning the facts that the Defendants had concealed or failed to disclose. Plaintiffs and Ohio State Class members did not, and could not, unravel the Defendants' deception on their own.~~

~~12. The Ohio Attorney General has made available for public inspection prior state court decisions which have held that the types of acts and omissions of Defendants in this Complaint—including, but not limited to, the failure to honor both implied warranties and express warranties, the making and distribution of false, deceptive, and/or misleading representations, and the concealment and/or non-disclosure of a substantial defect—constitute deceptive sales practices in violation of the CSPA. These cases include, but are not limited to, the following:~~

~~a. *Mason v. Mercedes-Benz USA, LLC* (OPIF #10002382);~~

~~b. *State ex rel. Betty D. Montgomery v. Ford Motor Co.* (OPIF #10002123);~~

~~c. *State ex rel. Betty D. Montgomery v. Bridgestone/Firestone, Inc.* (OPIF #10002025);~~

d. — ~~*Bellinger v. Hewlett Packard Co.*, No. 20744, 2002 Ohio App. LEXIS 1573 (Ohio Ct. App. Apr. 10, 2002) (OPIF #10002077);~~

e. — ~~*Borror v. MarineMax of Ohio*, No. OT 06-010, 2007 Ohio App. LEXIS 525 (Ohio Ct. App. Feb. 9, 2007) (OPIF #10002388);~~

f. — ~~*State ex rel. Jim Petro v. Craftmatic Organization, Inc.* (OPIF #10002347);~~

g. — ~~*Cranford v. Joseph Airport Toyota, Inc.* (OPIF #10001586);~~

h. — ~~*Brown v. Spears* (OPIF #10000403);~~

i. — ~~*Brinkman v. Mazda Motor of America, Inc.* (OPIF #10001427);~~

j. — ~~*Mosley v. Performance Mitsubishi aka Automanage* (OPIF #10001326);~~

and

k. — ~~*Walls v. Harry Williams dba Butch's Auto Sales* (OPIF #10001524).~~

13. — ~~Defendants owed Plaintiffs and the Ohio State Class a duty to disclose the safety risks associated with the SDM Calibration Defect, the true nature of the Class Vehicles, because Defendants possessed exclusive knowledge that they were manufacturing, selling, and distributing vehicles throughout the United States that did not perform as advertised; intentionally concealed the foregoing from regulators, Plaintiffs, and Ohio State Class members; and/or made incomplete representations about the Class Vehicles' true airbag and seatbelt safety features while purposefully withholding material facts that contradicted these representations.~~

14. — ~~Defendants' concealment of the true characteristics of the Class Vehicles' safety systems was material to Plaintiffs and the Ohio State Class.~~

15. — ~~Defendants' unfair or deceptive acts or practices were likely to and did in fact deceive regulators and reasonable consumers, including Plaintiffs and the Ohio State Class, about the true safety features of the Class Vehicles, the quality of the Defendants' brands, and the true value of the Class Vehicles.~~

16. — ~~Defendants' violations present a continuing risk to Plaintiffs and the Ohio State Class as well as to the general public. Defendants' unlawful acts and practices complained of herein affect the public interest.~~

17. ~~Plaintiffs and Ohio State Class members suffered ascertainable loss and actual damages as a direct and proximate result of Defendants' misrepresentations and concealment of and failure to disclose material information.~~

18. ~~Pursuant to Ohio Rev. Code § 1345.09, Plaintiffs and the Ohio State Class members seek an order enjoining Defendants' unfair and/or deceptive acts or practices, actual damages trebled, and attorneys' fees, costs, and any other just and proper relief under the Ohio CSPA.~~

**OHIO COUNT II:  
Violations of the Ohio Deceptive Trade Practices Act  
Ohio Rev. Code § 4165.01, *et seq.*  
(On Behalf of the Ohio State Class)**

19. ~~Plaintiffs reallege and incorporate by reference all preceding allegations as though fully set forth herein.~~

20. ~~Plaintiffs Brian Swann, Walter Tooson, and Gregory Juskiewicz (for the purposes of this count, "Plaintiffs") bring this claim on behalf of themselves and the Ohio State Class against all Defendants.~~

21. ~~Defendants, Plaintiffs, and the Ohio State Class are "persons" within the meaning of Ohio Rev. Code § 4165.01(D).~~

22. ~~Defendants engaged in "the course of [its] business" within the meaning of Ohio Rev. Code § 4165.02(A) with respect to the acts alleged herein.~~

23. ~~The Ohio Deceptive Trade Practices Act, Ohio Rev. Code § 4165.02(A) ("Ohio DTPA") prohibits deceptive trade practices.~~

24. ~~In the course of their business, Defendants concealed and suppressed material facts concerning the Class Vehicles and/or the defective SDMs, as detailed above. Specifically, Defendants misrepresented the Class Vehicles as safe and/or free from defects and failed to disclose and actively concealed the dangers and risk posed by the Class Vehicles and/or the SDM Calibration Defect, including serious injury or death.~~

25. ~~Defendants thus violated the Act by, at minimum:~~



1 a. ~~representing that Class Vehicles have characteristics, uses, benefits, and~~  
 2 ~~qualities which they do not have;~~

3 b. ~~representing that Class Vehicles are of a particular standard, quality, and~~  
 4 ~~grade when they are not; advertising Class Vehicles with the intent not to sell or lease them as~~  
 5 ~~advertised; and~~

6 c. ~~advertising the Class Vehicles as safe with the intent not to sell them as~~  
 7 ~~advertised.~~

8 ~~Ohio Rev. Code § 4165.02(A)(7), (9), and (11).~~

9 26. ~~Defendants intentionally and knowingly misrepresented material facts regarding~~  
 10 ~~the Class Vehicles with intent to mislead Plaintiffs and the Ohio State Class.~~

11 27. ~~Defendants knew or should have known that their conduct violated the Ohio~~  
 12 ~~DTPA.~~

13 28. ~~Defendants owed Plaintiffs and the Ohio State Class a duty to disclose the safety~~  
 14 ~~risks associated with the SDM Calibration Defect, the true nature of the Class Vehicles, because~~  
 15 ~~Defendants possessed exclusive knowledge that they were manufacturing, selling, and~~  
 16 ~~distributing vehicles throughout the United States that did not perform as advertised; intentionally~~  
 17 ~~concealed the foregoing from regulators, Plaintiffs, and Ohio State Class members; and/or made~~  
 18 ~~incomplete representations about the Class Vehicles' true airbag and seatbelt safety features while~~  
 19 ~~purposefully withholding material facts that contradicted these representations.~~

20 29. ~~Defendants' concealment of the true characteristics of the Class Vehicles' safety~~  
 21 ~~systems was material to Plaintiffs and the Ohio State Class.~~

22 30. ~~Plaintiffs and Ohio State Class members had no way of discerning that the~~  
 23 ~~Defendants' representations were false and misleading and/or otherwise learning the facts that the~~  
 24 ~~Defendants had concealed or failed to disclose. Plaintiffs and Ohio State Class members did not,~~  
 25 ~~and could not, unravel the Defendants' deception on their own.~~

26 31. ~~Defendants' unfair or deceptive acts or practices were likely to and did in fact~~  
 27 ~~deceive regulators and reasonable consumers, including Plaintiffs and the Ohio State Class, about~~  
 28

~~the true safety features of the Class Vehicles, the quality of the Defendants' brands, and the true value of the Class Vehicles.~~

~~32.—Defendants' violations present a continuing risk to Plaintiffs and the Ohio State Class, as well as to the general public. Defendants' unlawful acts and practices complained of herein affect the public interest.~~

~~33.—Plaintiffs and Ohio State Class members suffered ascertainable loss and actual damages as a direct and proximate result of Defendants' misrepresentations and concealment of and failure to disclose material information. Defendants had an ongoing duty to all their customers to refrain from unfair and deceptive practices under the Ohio DTPA. All owners of Class Vehicles suffered ascertainable loss as a result of Defendants' deceptive and unfair acts and practices made in the course of Defendants' business.~~

~~34.—Pursuant to Ohio Rev. Code § 4165.03, Plaintiffs and the Ohio State Class members seek an order enjoining Defendants' unfair and/or deceptive acts or practices, damages, punitive damages, and attorneys' fees, costs, and any other just and proper relief available under the Ohio DTPA.~~

**OHIO COUNT III:  
Breach of Express Warranty  
Ohio. Rev. Code § 1302.26, *et seq.* / U.C.C. § 2-313  
(On Behalf of the Ohio State Class)**

~~35.—Plaintiffs reallege and incorporate by reference all preceding allegations as though fully set forth herein.~~

~~36.—Plaintiffs Brian Swann, Walter Tooson, and Gregory Juskiewicz (for the purposes of this count, "Plaintiffs") bring this claim on behalf of themselves and the Ohio State Class against all Defendants.~~

~~37.—Defendants are and were at all relevant times "merchant[s]" with respect to motor vehicles under Ohio Rev. Code §§ 1302.01(5) and 1310.01(A)(20), and "sellers" of motor vehicles under § 1302.01(4).~~

~~38.—With respect to leases, Defendants are and were at all relevant times "lessors" of motor vehicles under Ohio Rev. Code § 1310.01(A)(20).~~

1           ~~39.—The Class Vehicles are and were at all relevant times “goods” within the meaning~~  
2 ~~of Ohio Rev. Code §§ 1302.01(8), and 1310.01(A)(8).~~

3           ~~40.—In connection with the purchase or lease of Class Vehicles, the Defendants~~  
4 ~~provided Plaintiffs and Ohio State Class members with written express warranties covering the~~  
5 ~~repair or replacement of components that are defective in materials or workmanship.~~

6           ~~41.—Defendants’ warranties formed the basis of the bargain that was reached when~~  
7 ~~Plaintiffs and Ohio State Class members unknowingly purchased or leased Class Vehicles that~~  
8 ~~came equipped with the SDM Calibration Defect.~~

9           ~~42.—However, Defendants knew or should have known that the warranties were false~~  
10 ~~and/or misleading. Specifically, Defendants were aware of the SDM Calibration Defect in the~~  
11 ~~Class Vehicles, which made the vehicles inherently defective and dangerous at the time that they~~  
12 ~~were sold and leased to Plaintiffs and Ohio State Class members.~~

13           ~~43.—Plaintiffs and Ohio State Class members reasonably relied on the Defendants’~~  
14 ~~express warranties when purchasing or leasing their Class Vehicles.~~

15           ~~44.—Defendants knowingly breached their express warranties to repair defects in~~  
16 ~~materials and workmanship by failing to repair the SDM Calibration Defect in the Class Vehicles.~~  
17 ~~Defendants also breached their express warranties by providing a product containing defects that~~  
18 ~~were never disclosed to Plaintiffs and Ohio State Class members.~~

19           ~~45.—Plaintiffs and Ohio State Class members have provided the Defendants with~~  
20 ~~reasonable notice and opportunity to cure the breaches of their express warranties by way of letter~~  
21 ~~sent by Plaintiffs on August 20, 2021. Defendants are further on notice due to numerous public~~  
22 ~~NHTSA complaints and individual lawsuits, as detailed herein.~~

23           ~~46.—Alternatively, any opportunity to cure the breach is unnecessary and futile.~~

24           ~~47.—As a direct and proximate result of the Defendants’ breach of express warranties,~~  
25 ~~Plaintiffs and Ohio State Class members have been damaged in an amount to be proven at trial.~~

26           ~~48.—Finally, because of Defendants’ breach of warranty as set forth herein, Plaintiffs~~  
27 ~~and Ohio State Class members assert, as additional and/or alternative remedies, the revocation of~~  
28

~~acceptance of the goods and the return to them of the purchase or lease price of all Class Vehicles currently owned or leased, and for such other incidental and consequential damages as allowed.~~

**OHIO COUNT IV:  
Breach of Implied Warranty of Merchantability  
Ohio Rev. Code §§ 1302.27 and 1310.19  
(On Behalf of the Ohio State Class)**

~~49.—Plaintiffs reallege and incorporate by reference all preceding allegations as though fully set forth herein.~~

~~50.—Plaintiffs Brian Swann, Walter Tooson, and Gregory Juskiewicz (for the purposes of this count, “Plaintiffs”) bring this claim on behalf of themselves and the Ohio State Class against all Defendants.~~

~~51.—Defendants are and were at all relevant times “merchant[s]” with respect to motor vehicles under Ohio Rev. Code §§ 1302.01(5) and 1310.01(A)(20), and “sellers” of motor vehicles under § 1302.01(4).~~

~~52.—With respect to leases, Defendants are and were at all relevant times “lessors” of motor vehicles under Ohio Rev. Code § 1310.01(A)(20).~~

~~53.—The Class Vehicles are and were at all relevant times “goods” within the meaning of Ohio Rev. Code §§ 1302.01(8), and 1310.01(A)(8).~~

~~54.—A warranty that the Class Vehicles were in merchantable condition and fit for the ordinary purpose for which vehicles are used is implied by law pursuant to Ohio Rev. Code §§ 1302.27 and 1310.19.~~

~~55.—The Class Vehicles did not comply with the implied warranty of merchantability because, at the time of sale and at all times thereafter, they were defective and not in merchantable condition, would not pass without objection in the trade, and were not fit for the ordinary purpose for which vehicles were used. Specifically, the Class Vehicles suffer from the SDM Calibration Defect, which may cause the airbags and seatbelt to fail to deploy during an accident, rendering the Class Vehicles inherently defective and dangerous.~~

56. ~~Defendants were provided reasonable notice of these issues by way of a letter sent by Plaintiffs on August 20, 2021, as well as numerous public NHTSA complaints and individual lawsuits, as detailed herein.~~

57. ~~Alternatively, any opportunity to cure the breach is unnecessary and futile.~~

58. ~~As a direct and proximate result of Defendants' breach of the implied warranty of merchantability, Plaintiffs and Ohio State Class members have been damaged in an amount to be proven at trial.~~

## **24. Oklahoma**

### **OKLAHOMA COUNT I: Violations of the Oklahoma Consumer Protection Act Okla. Stat. Tit. 15 § 751 *et seq.* (On Behalf of the Oklahoma State Class)**

1. ~~Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.~~

2. ~~Plaintiff Donald Roxberry (for the purposes of this count, "Plaintiff") brings this claim on behalf of themselves and the Oklahoma State Class against all Defendants.~~

3. ~~Defendants and the Oklahoma State Class are "persons" within the meaning of Okla. Stat. Tit. 15 § 752.1.~~

4. ~~Defendants engaged in "the course of [its] business" within the meaning of Okla. Stat. Tit. 15 § 752.3 with respect to the acts alleged herein.~~

5. ~~The Oklahoma Consumer Protection Act ("Oklahoma CPA") prohibits, in the course of business: "mak[ing] a false or misleading representation, knowingly or with reason to know, as to the characteristics . . . , uses, [or] benefits, of the subject of a consumer transaction," or making a false representation, "knowingly or with reason to know, that the subject of a consumer transaction is of a particular standard, style or model, if it is of another or "[a]dvertis[ing], knowingly or with reason to know, the subject of a consumer transaction with intent not to sell it as advertised;" and otherwise committing "an unfair or deceptive trade practice." Okla. Stat. Tit. 753.~~

6. ~~In the course of their business, Defendants violated the Oklahoma CPA by knowingly and intentionally misrepresenting, omitting, concealing, and/or failing to disclose~~

1 ~~material facts regarding the reliability, safety, and performance of the Class Vehicles, as detailed~~  
2 ~~above.~~

3 ~~7. Specifically, by misrepresenting the Class Vehicles as safe and/or free from~~  
4 ~~defects, and by failing to disclose and actively concealing the dangers and risk posed by the Class~~  
5 ~~Vehicles and/or the SDM Calibration Defect, Defendants engaged in unfair methods of~~  
6 ~~competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the~~  
7 ~~conduct of any trade or commerce, as prohibited by Okla. Stat. Tit. 753.~~

8 ~~8. Defendants' unfair or deceptive acts or practices, including misrepresentations,~~  
9 ~~concealments, omissions, and/or suppressions of material facts, had a tendency or capacity to~~  
10 ~~mislead and create a false impression in consumers, and were likely to and did in fact deceive~~  
11 ~~reasonable consumers, including Plaintiffs and Oklahoma State Class members, about the true~~  
12 ~~safety and reliability of Class Vehicles, the quality of the Class Vehicles, and the true value of the~~  
13 ~~Class Vehicles.~~

14 ~~9. Defendants' scheme and concealment of the SDM Calibration Defect and true~~  
15 ~~characteristics of the passenger safety systems in the Class Vehicles were material to Plaintiffs~~  
16 ~~and Oklahoma State Class members, as the Defendants intended. Had they known the truth,~~  
17 ~~Plaintiffs and Oklahoma State Class members would not have purchased or leased the Class~~  
18 ~~Vehicles, or would have paid significantly less for them.~~

19 ~~10. Plaintiff and Oklahoma State Class members had no way of discerning that~~  
20 ~~Defendants' representations were false and misleading and/or otherwise learning the facts that~~  
21 ~~Defendants had concealed or failed to disclose. Plaintiffs and Oklahoma State Class members did~~  
22 ~~not, and could not, unravel Defendants' deception on their own.~~

23 ~~11. Defendants had an ongoing duty to Plaintiff and Oklahoma State Class members to~~  
24 ~~refrain from unfair or deceptive practices under the Oklahoma CPA in the course of their~~  
25 ~~business. Specifically, Defendants owed Plaintiff and Oklahoma State Class members a duty to~~  
26 ~~disclose all the material facts concerning the SDM Calibration Defect in the Class Vehicles~~  
27 ~~because they possessed exclusive knowledge, they intentionally concealed the defect from~~  
28

~~Plaintiffs and Oklahoma State Class members, and/or they made misrepresentations that were misleading because they were contradicted by withheld facts.~~

~~12.—Defendants’ violations present a continuing risk to Plaintiff and Oklahoma State Class members, as well as to the general public. Defendants’ unlawful acts and practices complained of herein affect the public interest.~~

~~13.—Oklahoma State Class members suffered ascertainable loss and actual damages as a direct and proximate result of Defendants’ misrepresentations and concealment of and failure to disclose material information. Defendants had an ongoing duty to all their customers to refrain from unfair and deceptive practices under the Oklahoma CPA. All owners and lessees of Class Vehicles suffered ascertainable loss as a result of Defendants’ deceptive and unfair acts and practices made in the course of Defendants’ business.~~

~~14.—Pursuant to Okla. Stat. Tit. 15 § 761.1, the Oklahoma State Class seeks an order enjoining Defendants’ unfair and/or deceptive acts or practices, damages, punitive damages, and attorneys’ fees, costs, and any other just and proper relief available under the Oklahoma CPA.~~

~~**OKLAHOMA COUNT II:  
Breach of Express Warranty  
Okla. Stat. Tit. 12 §§ 2-313 and 2A-210  
(On Behalf of the Oklahoma State Class)**~~

~~15.—Plaintiffs re-allege and incorporate by reference all preceding allegations as though fully set forth herein.~~

~~16.—Plaintiffs Donald Roxberry (for the purposes of this count, “Plaintiff”) brings this claim on behalf of themselves and the Oklahoma State Class against all Defendants.~~

~~17.—Defendants are and were at all relevant times “merchant[s]” with respect to motor vehicles under Okla. Stat. Tit. 12A §§ 2-104(1) and 2-1103(3), and “sellers” of motor vehicles under § 2A-103(1)(t).~~

~~18.—With respect to leases, Defendants are and were at all relevant times “lessors” of motor vehicles under Okla. Stat. Tit. 12A § 2A-103(1)(p).~~

~~19.—The Class Vehicles are and were at all relevant times “goods” within the meaning of Okla. Stat. Tit. 12A §§ 2-105(1) and 2A-103(1)(h).~~

1           ~~20.—In connection with the purchase or lease of Class Vehicles, Defendants provided~~  
2 ~~Plaintiff and Oklahoma State Class members with written express warranties covering the repair~~  
3 ~~or replacement of components that are defective in materials or workmanship.~~

4           ~~21.—Defendants' warranties formed the basis of the bargain that was reached when~~  
5 ~~Plaintiff and Oklahoma State Class members unknowingly purchased or leased Class Vehicles~~  
6 ~~that came equipped with the SDM Calibration Defect.~~

7           ~~22.—However, Defendants knew or should have known that the warranties were false~~  
8 ~~and/or misleading. Specifically, Defendants were aware of the SDM Calibration Defect in the~~  
9 ~~Class Vehicles, which made the vehicles inherently defective and dangerous at the time that they~~  
10 ~~were sold and leased to Plaintiff and Oklahoma State Class members.~~

11           ~~23.—Plaintiffs and Oklahoma State Class members reasonably relied on the~~  
12 ~~Defendants' express warranties when purchasing or leasing their Class Vehicles.~~

13           ~~24.—Defendants knowingly breached their express warranties to repair defects in~~  
14 ~~materials and workmanship by failing to repair the SDM Calibration Defect in the Class Vehicles.~~  
15 ~~Defendants also breached their express warranties by providing a product containing defects that~~  
16 ~~were never disclosed to Plaintiff and Oklahoma State Class members.~~

17           ~~25.—Plaintiff and Oklahoma State Class members have provided the Defendants with~~  
18 ~~reasonable notice and opportunity to cure the breaches of their express warranties by way of letter~~  
19 ~~sent by Plaintiffs on August 20, 2021. Defendants are further on notice due to numerous public~~  
20 ~~NHTSA complaints and individual lawsuits, as detailed herein.~~

21           ~~26.—Alternatively, any opportunity to cure the breach is unnecessary and futile.~~

22           ~~27.—As a direct and proximate result of the Defendants' breach of express warranties,~~  
23 ~~Plaintiffs and Oklahoma State Class members have been damaged in an amount to be proven at~~  
24 ~~trial.~~



**OKLAHOMA COUNT III:  
Breach of Implied Warranty of Merchantability  
Okla. Stat. Tit. 12A §§ 2-314 and 2A-212  
(On Behalf of the Oklahoma State Class)**

~~28.——Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set forth herein.~~

~~29.——Plaintiff Donald Roxberry (for the purposes of this count, “Plaintiffs”) brings this claim on behalf of themselves and the Oklahoma State Class against all Defendants.~~

~~30.——Defendants are and were at all relevant times “merchant[s]” with respect to motor vehicles under Okla. Stat. Tit. 12A §§ 2-104(1) and 2-1103(3), and “sellers” of motor vehicles under § 2A-103(1)(t).~~

~~31.——With respect to leases, Defendants are and were at all relevant times “lessors” of motor vehicles under Okla. Stat. Tit. 12A § 2A-103(1)(p).~~

~~32.——The Class Vehicles are and were at all relevant times “goods” within the meaning of Okla. Stat. Tit. 12A §§ 2-105(1) and 2A-103(1)(h).~~

~~33.——A warranty that the Class Vehicles were in merchantable condition and fit for the ordinary purpose for which vehicles are used is implied by law pursuant to Okla. Stat. Tit. 12A §§ 2-314 and 2A-212.~~

~~34.——The Class Vehicles did not comply with the implied warranty of merchantability because, at the time of sale and at all times thereafter, they were defective and not in merchantable condition, would not pass without objection in the trade, and were not fit for the ordinary purpose for which vehicles were used. Specifically, the Class Vehicles suffer from the SDM Calibration Defect, which may cause the airbags and seatbelt to fail to deploy during an accident, rendering the Class Vehicles inherently defective and dangerous.~~

~~35.——Defendants were provided reasonable notice of these issues by way of a letter sent by Plaintiffs on August 20, 2021, as well as numerous public NHTSA complaints and individual lawsuits, as detailed herein.~~

~~36.——Alternatively, any opportunity to cure the breach is unnecessary and futile.~~

~~37. As a direct and proximate result of Defendants' breach of the implied warranty of merchantability, Plaintiff and Oklahoma State Class members have been damaged in an amount to be proven at trial.~~

**25. Oregon**

**OREGON COUNT I:  
Violations of the Oregon Unlawful Trade Practices Act  
Or. Rev. Stat. § 646.605, *et seq.*  
(On Behalf of the Oregon State Class)**

~~1. Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.~~

~~2. Plaintiff Stephen Miles (for the purposes of this count, "Plaintiff") brings this claim on behalf of himself and the Oregon State Class against all Defendants.~~

~~3. Plaintiff, Defendants, and the Oregon State Class are "persons" within the meaning of Or. Rev. Stat. § 646.605(4).~~

~~4. Defendants are engaged in "trade" or "commerce" within the meaning of Or. Rev. Stat. § 646.605(8).~~

~~5. The Oregon Unfair Trade Practices Act ("Oregon UTPA") prohibits "unfair or deceptive acts conduct in trade or commerce . . . ." Or. Rev. Stat. § 646.608(1).~~

~~6. In the course of their business, Defendants violated the Oregon UTPA by knowingly and intentionally misrepresenting, omitting, concealing, and/or failing to disclose material facts regarding the reliability, safety, and performance of the Class Vehicles, as detailed above.~~

~~7. Specifically, by misrepresenting the Class Vehicles as safe and/or free from defects, and by failing to disclose and actively concealing the dangers and risk posed by the Class Vehicles and/or the SDM Calibration Defect, Defendants engaged in unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce, as prohibited by Or. Rev. Stat. § 646.608(1).~~

~~8. Defendants' unfair or deceptive acts or practices, including misrepresentations, concealments, omissions, and/or suppressions of material facts, had a tendency or capacity to mislead and create a false impression in consumers, and were likely to and did in fact deceive~~

1 ~~reasonable consumers, including Plaintiff and Oregon State Class members, about the true safety~~  
2 ~~and reliability of Class Vehicles, the quality of the Class Vehicles, and the true value of the Class~~  
3 ~~Vehicles.~~

4 ~~9. Defendants' scheme and concealment of the SDM Calibration Defect and true~~  
5 ~~characteristics of the passenger safety systems in the Class Vehicles were material to Plaintiff and~~  
6 ~~Oregon State Class members, as the Defendants intended. Had they known the truth, Plaintiff and~~  
7 ~~Oregon State Class members would not have purchased or leased the Class Vehicles, or would~~  
8 ~~have paid significantly less for them.~~

9 ~~10. Plaintiff and Oregon State Class members had no way of discerning that~~  
10 ~~Defendants' representations were false and misleading and/or otherwise learning the facts that~~  
11 ~~Defendants had concealed or failed to disclose. Plaintiff and Oregon State Class members did not,~~  
12 ~~and could not, unravel Defendants' deception on their own.~~

13 ~~11. Defendants had an ongoing duty to Plaintiff and Oregon State Class members to~~  
14 ~~refrain from unfair or deceptive practices under the Oregon UTPA in the course of their business.~~  
15 ~~Specifically, Defendants owed Plaintiff and Oregon State Class members a duty to disclose all the~~  
16 ~~material facts concerning the SDM Calibration Defect in the Class Vehicles because they~~  
17 ~~possessed exclusive knowledge, they intentionally concealed the defect from Plaintiff and Oregon~~  
18 ~~State Class members, and/or they made misrepresentations that were misleading because they~~  
19 ~~were contradicted by withheld facts.~~

20 ~~12. Defendants' violations present a continuing risk to Plaintiff and Oregon State~~  
21 ~~Class members, as well as to the general public. Defendants' unlawful acts and practices~~  
22 ~~complained of herein affect the public interest.~~

23 ~~13. Plaintiff and Oregon State Class members suffered ascertainable loss and actual~~  
24 ~~damages as a direct and proximate result of Defendants' misrepresentations and concealment of~~  
25 ~~and failure to disclose material information. Defendants had an ongoing duty to all their~~  
26 ~~customers to refrain from unfair and deceptive practices under the Oregon UTPA. All owners and~~  
27 ~~lessees of Class Vehicles suffered ascertainable loss as a result of Defendants' deceptive and~~  
28 ~~unfair acts and practices made in the course of Defendants' business.~~

14. Pursuant to Or. Rev. Stat. § 646.638, the Oregon State Class seeks an order enjoining Defendants' unfair and/or deceptive acts or practices, damages, punitive damages, and attorneys' fees, costs, and any other just and proper relief available under the Oregon UTPA.

**OREGON COUNT II:  
Breach of Express Warranty  
Or. Rev. Stat. §§ 72.3130 and 72A.2100  
(On Behalf of the Oregon State Class)**

15. Plaintiffs re-allege and incorporate by reference all preceding allegations as though fully set forth herein.

16. Plaintiff Stephen Miles (for the purposes of this count, "Plaintiff") brings this claim on behalf of himself and the Oregon State Class against all Defendants.

17. Defendants are and were at all relevant times "merchant[s]" with respect to motor vehicles under Or. Rev. Stat. §§ 72.1040(1) and 72A.1030(1)(t), and "sellers" of motor vehicles under § 72.1030(1)(d).

18. With respect to leases, Defendants are and were at all relevant times "lessors" of motor vehicles under Or. Rev. Stat. § 72A.1030(1)(p).

19. The Class Vehicles are and were at all relevant times "goods" within the meaning of Or. Rev. Stat. §§ 72.1050(1) and 72A.1030(1)(h).

20. In connection with the purchase or lease of Class Vehicles, Defendants provided Plaintiff and Oregon State Class members with written express warranties covering the repair or replacement of components that are defective in materials or workmanship.

21. Defendants' warranties formed the basis of the bargain that was reached when Plaintiff and Oregon State Class members unknowingly purchased or leased Class Vehicles that came equipped with the SDM Calibration Defect.

22. However, Defendants knew or should have known that the warranties were false and/or misleading. Specifically, Defendants were aware of the SDM Calibration Defect in the Class Vehicles, which made the vehicles inherently defective and dangerous at the time that they were sold and leased to Plaintiff and Oregon State Class members.

~~23.—Plaintiff and Oregon State Class members reasonably relied on the Defendants’ express warranties when purchasing or leasing their Class Vehicles.~~

~~24.—Defendants knowingly breached their express warranties to repair defects in materials and workmanship by failing to repair the SDM Calibration Defect in the Class Vehicles. Defendants also breached their express warranties by providing a product containing defects that were never disclosed to Plaintiff and Oregon State Class members.~~

~~25.—Plaintiff and Oregon State Class members have provided the Defendants with reasonable notice and opportunity to cure the breaches of their express warranties by way of letter sent by Plaintiffs on August 20, 2021. Defendants are further on notice due to numerous public NHTSA complaints and individual lawsuits, as detailed herein.~~

~~26.—Alternatively, any opportunity to cure the breach is unnecessary and futile.~~

~~27.—As a direct and proximate result of the Defendants’ breach of express warranties, Plaintiffs and Michigan State Class members have been damaged in an amount to be proven at trial.~~

**OREGON COUNT III:  
Breach of Implied Warranty of Merchantability  
Or. Rev. Stat. §§ 72.3140 and 72A.2120  
(On Behalf of the Oregon State Class)**

~~28.—Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set forth herein.~~

~~29.—Plaintiff Stephen Miles (for the purposes of this count, “Plaintiff”) brings this claim on behalf of himself and the Oregon State Class against all Defendants.~~

~~30.—Defendants are and were at all relevant times “merchant[s]” with respect to motor vehicles under Or. Rev. Stat. §§ 72.1040(1) and 72A.1030(1)(t), and “sellers” of motor vehicles under § 72.1030(1)(d).~~

~~31.—With respect to leases, Defendants are and were at all relevant times “lessors” of motor vehicles under Or. Rev. Stat. § 72A.1030(1)(p).~~

~~32.—The Class Vehicles are and were at all relevant times “goods” within the meaning of Or. Rev. Stat. §§ 72.1050(1) and 72A.1030(1)(h).~~

33. ~~A warranty that the Class Vehicles were in merchantable condition and fit for the ordinary purpose for which vehicles are used is implied by law pursuant to Or. Rev. Stat. §§ 72.3140 and 72A-2120.~~

34. ~~The Class Vehicles did not comply with the implied warranty of merchantability because, at the time of sale and at all times thereafter, they were defective and not in merchantable condition, would not pass without objection in the trade, and were not fit for the ordinary purpose for which vehicles were used. Specifically, the Class Vehicles suffer from the SDM Calibration Defect, which may cause the airbags and seatbelt to fail to deploy during an accident, rendering the Class Vehicles inherently defective and dangerous.~~

35. ~~Defendants were provided reasonable notice of these issues by way of a letter sent by Plaintiffs on August 20, 2021, as well as numerous public NHTSA complaints and individual lawsuits, as detailed herein.~~

36. ~~Alternatively, any opportunity to cure the breach is unnecessary and futile.~~

37. ~~As a direct and proximate result of Defendants' breach of the implied warranty of merchantability, Plaintiff and Oregon State Class members have been damaged in an amount to be proven at trial.~~

## **26. ~~Pennsylvania~~**

### **~~PENNSYLVANIA COUNT I: Violations of the Pennsylvania Unfair Trade Practices and Consumer Protection Law 73 P.S. § 201-1 et seq. (On Behalf of the Pennsylvania State Class)~~**

1. ~~Plaintiffs incorporate by reference all allegations in this Complaint as though fully set forth herein.~~

2. ~~Plaintiffs Bruce Heise, Michael Romania, Rex Hartman, and William Endress (for the purposes of this count, "Plaintiffs") bring this claim on behalf of themselves and the Pennsylvania State Class against all Defendants.~~

3. ~~Plaintiffs, Defendants, and the Pennsylvania State Class are "persons" within the meaning of 73 P.S. § 201-2(2).~~

1           4. ~~Defendants engaged in “trade” or “commerce” within the meaning of 73 P.S.~~  
 2   ~~§ 201-2(3).~~

3           5. ~~The Pennsylvania Unfair Trade Practices Act (“Pennsylvania UTPA”) prohibits~~  
 4   ~~“unfair or deceptive acts or practices in the conduct of any trade or commerce.” 73 P.S. § 201-3.~~

5           6. ~~In the course of their business, Defendants violated the Pennsylvania UTPA by~~  
 6   ~~knowingly and intentionally misrepresenting, omitting, concealing, and/or failing to disclose~~  
 7   ~~material facts regarding the reliability, safety, and performance of the Class Vehicles, as detailed~~  
 8   ~~above.~~

9           7. ~~Specifically, by misrepresenting the Class Vehicles as safe and/or free from~~  
 10   ~~defects, and by failing to disclose and actively concealing the dangers and risk posed by the Class~~  
 11   ~~Vehicles and/or the SDM Calibration Defect, Defendants engaged in one or more unfair or~~  
 12   ~~deceptive business practices prohibited by the Pennsylvania UTPA:~~

13           a. ~~Representing that the Class Vehicles and/or the SDM Calibration system~~  
 14   ~~have characteristics, uses, benefits, and qualities which they do not have.~~

15           b. ~~Representing that the Class Vehicles and/or the SDM Calibration system~~  
 16   ~~are of a particular standard, quality, and grade when they are not.~~

17           c. ~~Advertising the Class Vehicles and/or the SDM Calibration system with~~  
 18   ~~the intent not to sell or lease them as advertised.~~

19           d. ~~Engaging in any other fraudulent or deceptive conduct which creates a~~  
 20   ~~likelihood of confusion or of misunderstanding.~~

21           8. ~~Defendants’ unfair or deceptive acts or practices, including misrepresentations,~~  
 22   ~~concealments, omissions, and/or suppressions of material facts, had a tendency or capacity to~~  
 23   ~~mislead and create a false impression in consumers, and were likely to and did in fact deceive~~  
 24   ~~reasonable consumers, including the Plaintiffs and Pennsylvania State Class members, about the~~  
 25   ~~true safety and reliability of Class Vehicles, the quality of the Class Vehicles, and the true value~~  
 26   ~~of the Class Vehicles.~~

27           9. ~~Defendants’ scheme and concealment of the SDM Calibration Defect in the Class~~  
 28   ~~Vehicles were material to the Plaintiffs and Pennsylvania State Class members, as Defendants~~

1 ~~intended. Had they known the truth, Plaintiffs and Pennsylvania State Class members would not~~  
2 ~~have purchased or leased the Class Vehicles, or would have paid significantly less for them.~~

3 ~~10. Plaintiffs and Pennsylvania State Class members had no way of discerning that the~~  
4 ~~Defendants' representations were false and misleading and/or otherwise learning the facts that the~~  
5 ~~Defendants had concealed or failed to disclose. Plaintiffs and Pennsylvania State Class members~~  
6 ~~did not, and could not, unravel the Defendants' deception on their own.~~

7 ~~11. Defendants had an ongoing duty to Plaintiffs and Pennsylvania State Class~~  
8 ~~members to refrain from unfair or deceptive practices under the Pennsylvania UTPA in the course~~  
9 ~~of their business. Specifically, Defendants owed Plaintiffs and Pennsylvania State Class members~~  
10 ~~a duty to disclose all the material facts concerning the SDM Calibration Defect in the Class~~  
11 ~~Vehicles because they possessed exclusive knowledge, they intentionally concealed the defect~~  
12 ~~from Plaintiffs and Pennsylvania State Class members, and/or they made misrepresentations that~~  
13 ~~were misleading because they were contradicted by withheld facts~~

14 ~~12. Defendants' violations present a continuing risk to the Pennsylvania State Class as~~  
15 ~~well as to the general public. Defendants' unlawful acts and practices complained of herein affect~~  
16 ~~the public interest.~~

17 ~~13. Plaintiffs and Pennsylvania State Class members suffered ascertainable loss and~~  
18 ~~actual damages as a direct and proximate result of Defendants' misrepresentations and~~  
19 ~~concealment of and failure to disclose material information. Defendants had an ongoing duty to~~  
20 ~~all their customers to refrain from unfair and deceptive practices under the Pennsylvania UTPA.~~  
21 ~~All owners of Class Vehicles suffered ascertainable loss as a result of Defendants' deceptive and~~  
22 ~~unfair acts and practices made in the course of Defendants' business.~~

23 ~~14. As a direct and proximate result of Defendants' violations of the Pennsylvania~~  
24 ~~UTPA, Pennsylvania State Class members have suffered injury in fact and/or actual damage.~~

25 ~~15. Pursuant to 73 P.S. § 201-9.2(a), Plaintiffs and the Pennsylvania State Class seek~~  
26 ~~an order enjoining Defendants' unfair and/or deceptive acts or practices, damages, punitive~~  
27 ~~damages, and attorneys' fees, costs, and any other just and proper relief available under the~~  
28 ~~Pennsylvania UTPA.~~



**~~PENNSYLVANIA COUNT II:  
Breach of Express Warranty  
13. Pa. Cons. Stat. §§ 2313 and 2A210  
(On Behalf of the Pennsylvania State Class)~~**

~~16. Plaintiffs re-allege and incorporate by reference all preceding allegations as though fully set forth herein.~~

~~17. Plaintiffs Bruce Heise, Michael Romania, Rex Hartman, and William Endress (for the purposes of this count, “Plaintiffs”) bring this claim on behalf of themselves and the Pennsylvania State Class against all Defendants.~~

~~18. Defendants are and were at all relevant times “merchant[s]” with respect to motor vehicles under 13 Pa. Cons. Stat. §§ 2104 and 2A103(a), and “sellers” of motor vehicles under § 2103(a).~~

~~19. With respect to leases, Defendants are and were at all relevant times “lessors” of motor vehicles under 13 Pa. Cons. Stat. § 2A103(a).~~

~~20. The Class Vehicles are and were at all relevant times “goods” within the meaning of 13 Pa. Cons. Stat. §§ 2105(a) and 2A103(a).~~

~~21. In connection with the purchase or lease of Class Vehicles, the Defendants provided Plaintiffs and Pennsylvania State Class members with written express warranties covering the repair or replacement of components that are defective in materials or workmanship.~~

~~22. Defendants’ warranties formed the basis of the bargain that was reached when Plaintiffs and Pennsylvania State Class members unknowingly purchased or leased Class Vehicles that came equipped with the SDM Calibration Defect.~~

~~23. However, Defendants knew or should have known that the warranties were false and/or misleading. Specifically, Defendants were aware of the SDM Calibration Defect in the Class Vehicles, which made the vehicles inherently defective and dangerous at the time that they were sold and leased to Plaintiffs and Pennsylvania State Class members.~~

~~24. Plaintiffs and Pennsylvania State Class members reasonably relied on the Defendants’ express warranties when purchasing or leasing their Class Vehicles.~~

25. ~~Defendants knowingly breached their express warranties to repair defects in materials and workmanship by failing to repair the SDM Calibration Defect in the Class Vehicles. Defendants also breached their express warranties by providing a product containing defects that were never disclosed to Plaintiffs and Pennsylvania State Class members.~~

26. ~~Plaintiffs and Pennsylvania State Class members have provided the Defendants with reasonable notice and opportunity to cure the breaches of their express warranties by way of letter sent by Plaintiffs on August 20, 2021. Defendants are further on notice due to numerous public NHTSA complaints and individual lawsuits, as detailed herein.~~

27. ~~Alternatively, any opportunity to cure the breach is unnecessary and futile.~~

28. ~~As a direct and proximate result of Defendants' breach of express warranties, Plaintiffs and Pennsylvania State Class members have been damaged in an amount to be determined at trial.~~

**PENNSYLVANIA COUNT III:  
Breach of Implied Warranty of Merchantability  
13. Pa. Cons. Stat. §§ 2314 and 2A212  
(On Behalf of the Pennsylvania State Class)**

29. ~~Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set forth herein.~~

30. ~~Plaintiffs Bruce Heise, Michael Romania, Rex Hartman, and William Endress (for the purposes of this count, "Plaintiffs") bring this claim on behalf of themselves and the Pennsylvania State Class against all Defendants.~~

31. ~~Defendants are and were at all relevant times "merchant[s]" with respect to motor vehicles under 13 Pa. Cons. Stat. §§ 2104 and 2A103(a), and "sellers" of motor vehicles under § 2103(a).~~

32. ~~With respect to leases, Defendants are and were at all relevant times "lessors" of motor vehicles under 13 Pa. Cons. Stat. § 2A103(a).~~

33. ~~The Class Vehicles are and were at all relevant times "goods" within the meaning of 13 Pa. Cons. Stat. §§ 2105(a) and 2A103(a).~~

34. ~~A warranty that the Class Vehicles were in merchantable condition and fit for the ordinary purpose for which vehicles are used is implied by law pursuant to 13 Pa. Cons. Stat. §§ 2314 and 2A212.~~

35. ~~The Class Vehicles did not comply with the implied warranty of merchantability because, at the time of sale and at all times thereafter, they were defective and not in merchantable condition, would not pass without objection in the trade, and were not fit for the ordinary purpose for which vehicles were used. Specifically, the Class Vehicles suffer from the SDM Calibration Defect, which may cause the airbags and seatbelt to fail to deploy during an accident, rendering the Class Vehicles inherently defective and dangerous.~~

36. ~~Defendants were provided reasonable notice of these issues by way of a letter sent by Plaintiffs on August 20, 2021, as well as numerous public NHTSA complaints and individual lawsuits, as detailed herein.~~

37. ~~Alternatively, any opportunity to cure the breach is unnecessary and futile.~~

38. ~~As a direct and proximate result of Defendants' breach of the implied warranty of merchantability, Plaintiffs and Pennsylvania State Class members have been damaged in an amount to be proven at trial.~~

## **27. South Carolina**

### **SOUTH CAROLINA COUNT I: Violations of the South Carolina Unfair Trade Practices Act S.C. Code Ann. § 39-5-10 *et seq.* (On Behalf of the South Carolina State Class)**

1. ~~Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set forth herein.~~

2. ~~Plaintiffs Lisa Gerould and Andrew Lawson, (for the purposes of this count, "Plaintiffs") bring this claim on behalf of themselves and the South Carolina State Class against all Defendants.~~

3. ~~Defendants and the South Carolina State Class are "persons" within the meaning of S.C. Code § 39-5-10(a).~~

1           4. ~~Defendants are engaged in “trade” or “commerce” within the meaning of S.C.~~  
2 ~~Code § 39-5-10(b).~~

3           5. ~~The South Carolina Unfair Trade Practices Act (“South Carolina UTPA”)~~  
4 ~~prohibits “unfair or deceptive acts or practices in the conduct of any trade or commerce.” S.C.~~  
5 ~~Code § 39-5-20(a).~~

6           6. ~~In the course of their business, Defendants violated the South Carolina UTPA by~~  
7 ~~knowingly and intentionally misrepresenting, omitting, concealing, and/or failing to disclose~~  
8 ~~material facts regarding the reliability, safety, and performance of the Class Vehicles, as detailed~~  
9 ~~above.~~

10           7. ~~Specifically, by misrepresenting the Class Vehicles as safe and/or free from~~  
11 ~~defects, and by failing to disclose and actively concealing the dangers and risk posed by the Class~~  
12 ~~Vehicles and/or the SDM Calibration Defect, Defendants engaged in unfair methods of~~  
13 ~~competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the~~  
14 ~~conduct of any trade or commerce, as prohibited by S.C. Code Ann. § 39-5-20(a).~~

15           8. ~~Defendants’ unfair or deceptive acts or practices, including misrepresentations,~~  
16 ~~concealments, omissions, and/or suppressions of material facts, had a tendency or capacity to~~  
17 ~~mislead and create a false impression in consumers, and were likely to and did in fact deceive~~  
18 ~~reasonable consumers, including Plaintiffs and South Carolina State Class members, about the~~  
19 ~~true safety and reliability of Class Vehicles, the quality of the Class Vehicles, and the true value~~  
20 ~~of the Class Vehicles.~~

21           9. ~~Defendants’ scheme and concealment of the SDM Calibration Defect and true~~  
22 ~~characteristics of the passenger safety systems in the Class Vehicles were material to Plaintiffs~~  
23 ~~and South Carolina State Class members, as the Defendants intended. Had they known the truth,~~  
24 ~~Plaintiffs and South Carolina State Class members would not have purchased or leased the Class~~  
25 ~~Vehicles, or would have paid significantly less for them.~~

26           10. ~~Plaintiffs and South Carolina State Class members had no way of discerning that~~  
27 ~~Defendants’ representations were false and misleading and/or otherwise learning the facts that~~  
28

~~Defendants had concealed or failed to disclose. Plaintiffs and South Carolina State Class members did not, and could not, unravel Defendants' deception on their own.~~

~~11.— Defendants had an ongoing duty to Plaintiffs and South Carolina State Class members to refrain from unfair or deceptive practices under the South Carolina UTPA in the course of their business. Specifically, Defendants owed Plaintiffs and South Carolina State Class members a duty to disclose all the material facts concerning the SDM Calibration Defect in the Class Vehicles because they possessed exclusive knowledge, they intentionally concealed the defect from Plaintiffs and South Carolina State Class members, and/or they made misrepresentations that were misleading because they were contradicted by withheld facts.~~

~~12.— Defendants' violations present a continuing risk to Plaintiffs and South Carolina State Class members, as well as to the general public. Defendants' unlawful acts and practices complained of herein affect the public interest.~~

~~13.— Plaintiffs and the South Carolina State Class suffered ascertainable loss and actual damages as a direct and proximate result of Defendants' misrepresentations and concealment of and failure to disclose material information.~~

~~14.— Pursuant to S.C. Code § 39-5-140(a), Plaintiffs and the South Carolina State Class seek an order enjoining Defendants' unfair and/or deceptive acts or practices, damages, treble damages for willful and knowing violations, punitive damages, and attorneys' fees, costs, and any other just and proper relief available under the South Carolina UTPA.~~

~~**SOUTH CAROLINA COUNT II:  
Violations of the South Carolina Regulation of Manufacturers,  
Distributors, & Dealers Act  
S.C. Code Ann. § 56-15-10 et seq.  
(On Behalf of the South Carolina State Class)**~~

~~15.— Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set forth herein.~~

~~16.— Plaintiffs Lisa Gerould and Andrew Lawson, (for the purposes of this count, "Plaintiffs") bring this claim on behalf of themselves and the South Carolina State Class against all Defendants.~~

1           ~~17.—Defendants are “manufacturer[s]” as set forth in S.C. Code Ann. § 56-15-10, as it~~  
2 ~~is engaged in the business of manufacturing or assembling new and unused motor vehicles.~~

3           ~~18.—Defendants committed unfair or deceptive acts or practices that violated the South~~  
4 ~~Carolina Regulation of Manufacturers, Distributors, and Dealers Act (“Dealers Act”), S.C. Code~~  
5 ~~Ann. § 56-15-30.~~

6           ~~19.—Defendants engaged in actions which were arbitrary, in bad faith, unconscionable,~~  
7 ~~and which caused damage to the South Carolina State Class and to the public.~~

8           ~~20.—Defendants’ bad faith and unconscionable actions include, but are not limited to:~~  
9 ~~(1) representing that Class Vehicles have characteristics, uses, benefits, and qualities which they~~  
10 ~~do not have, (2) representing that Class Vehicles are of a particular standard, quality, and grade~~  
11 ~~when they are not, (3) advertising Class Vehicles with the intent not to sell them as advertised, (4)~~  
12 ~~representing that a transaction involving Class Vehicles confers or involves rights, remedies, and~~  
13 ~~obligations which it does not, and (5) representing that the subject of a transaction involving~~  
14 ~~Class Vehicles has been supplied in accordance with a previous representation when it has not.~~

15           ~~21.—Defendants resorted to and used false and misleading advertisements in connection~~  
16 ~~with their business. As alleged above, Defendants made numerous material statements about the~~  
17 ~~safety and reliability of the Class Vehicles that were either false or misleading. Each of these~~  
18 ~~statements contributed to the deceptive context of Defendants’ unlawful advertising and~~  
19 ~~representations as a whole.~~

20           ~~22.—Pursuant to S.C. Code Ann. § 56-15-110(2), Plaintiffs bring this action on behalf~~  
21 ~~of themselves and the South Carolina State Class, as the action is one of common or general~~  
22 ~~interest to many persons and the parties are too numerous to bring them all before the court.~~

23           ~~23.—The South Carolina State Class is entitled to double their actual damages, the cost~~  
24 ~~of the suit, attorney’s fees pursuant to S.C. Code Ann. § 56-15-110. Plaintiffs also seek injunctive~~  
25 ~~relief under S.C. Code Ann. § 56-15-110.~~

**SOUTH CAROLINA COUNT III:  
Breach of Express Warranty  
S.C. Code §§ 36-2-313 and 36-2A-210  
(On Behalf of the South Carolina State Class)**

24.——Plaintiffs re-allege and incorporate by reference all preceding allegations as though fully set forth herein.

25.——Plaintiffs Lisa Gerould and Andrew Lawson, (for the purposes of this count, “Plaintiffs”) bring this claim on behalf of themselves and the South Carolina State Class against all Defendants.

26.——Defendants are and were at all relevant times “merchant[s]” with respect to motor vehicles under S.C. Code §§ 36-2-104(1) and 36-2A-103(1)(t), and “sellers” of motor vehicles under § 36-2-103(1)(d).

27.——With respect to leases, Defendants are and were at all relevant times “lessors” of motor vehicles under S.C. Code § 36-2A-103(1)(p).

28.——All South Carolina State Class members who purchased Class Vehicles in South Carolina are “buyers” within the meaning of S.C. Code Ann. § 36-2-103(1)(a).

29.——All South Carolina State Class members who leased Class Vehicles in South Carolina are “lessees” within the meaning of S.C. Code Ann. § 36-2A-103(1)(n).

30.——The Class Vehicles are and were at all relevant times “goods” within the meaning of S.C. Code §§ 36-2-105(1) and 36-2A-103(1)(h).

31.——In connection with the purchase or lease of Class Vehicles, the Defendants provided Plaintiffs and South Carolina State Class members with written express warranties covering the repair or replacement of components that are defective in materials or workmanship.

32.——Defendants’ warranties formed the basis of the bargain that was reached when Plaintiffs and South Carolina State Class members unknowingly purchased or leased Class Vehicles that came equipped with the SDM Calibration Defect.

33.——However, Defendants knew or should have known that the warranties were false and/or misleading. Specifically, Defendants were aware of the SDM Calibration Defect in the

~~Class Vehicles, which made the vehicles inherently defective and dangerous at the time that they were sold and leased to Plaintiffs and South Carolina State Class members.~~

~~34.—Plaintiffs and South Carolina State Class members reasonably relied on the Defendants’ express warranties when purchasing or leasing their Class Vehicles.~~

~~35.—Defendants knowingly breached their express warranties to repair defects in materials and workmanship by failing to repair the SDM Calibration Defect in the Class Vehicles. Defendants also breached their express warranties by providing a product containing defects that were never disclosed to Plaintiffs and South Carolina State Class members.~~

~~36.—Plaintiffs and South Carolina State Class members have provided the Defendants with reasonable notice and opportunity to cure the breaches of their express warranties by way of letter sent by Plaintiffs on August 20, 2021 and numerous public NHTSA complaints.~~

~~37.—Alternatively, any opportunity to cure the breach is unnecessary and futile.~~

~~38.—As a direct and proximate result of Defendants’ breach of express warranties, South Carolina State Class members have been damaged in an amount to be determined at trial.~~

**SOUTH CAROLINA COUNT IV:  
Breach of Implied Warranty of Merchantability  
S.C. Code §§ 36-2-314 and 36-2A-212  
(On Behalf of the South Carolina State Class)**

~~39.—Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set forth herein.~~

~~40.—Plaintiffs Lisa Gerould and Andrew Lawson, (for the purposes of this count, “Plaintiffs”) bring this claim on behalf of themselves and the South Carolina State Class against all Defendants.~~

~~41.—Defendants are and were at all relevant times “merchant[s]” with respect to motor vehicles under S.C. Code §§ 36-2-104(1) and 36-2A-103(1)(t), and “sellers” of motor vehicles under § 36-2-103(1)(d).~~

~~42.—With respect to leases, Defendants are and were at all relevant times “lessors” of motor vehicles under S.C. Code § 36-2A-103(1)(p).~~



43. ~~Plaintiffs and South Carolina State Class members who purchased Class Vehicles in South Carolina are “buyers” within the meaning of S.C. Code Ann. § 36-2-103(1)(a).~~

44. ~~Plaintiffs and South Carolina State Class members who leased Class Vehicles in South Carolina are “lessees” within the meaning of S.C. Code Ann. § 36-2A-103(1)(n).~~

45. ~~The Class Vehicles are and were at all relevant times “goods” within the meaning of S.C. Code §§ 36-2-105(1) and 36-2A-103(1)(h).~~

46. ~~A warranty that the Class Vehicles were in merchantable condition and fit for the ordinary purpose for which vehicles are used is implied by law pursuant to S.C. Code §§ 36-2-314 and 36-2A-212.~~

47. ~~The Class Vehicles did not comply with the implied warranty of merchantability because, at the time of sale and at all times thereafter, they were defective and not in merchantable condition, would not pass without objection in the trade, and were not fit for the ordinary purpose for which vehicles were used. Specifically, the Class Vehicles suffer from the SDM Calibration Defect, which may cause the airbags and seatbelt to fail to deploy during an accident, rendering the Class Vehicles inherently defective and dangerous.~~

48. ~~Defendants were provided reasonable notice of these issues by way of a letter sent by Plaintiffs on August 20, 2021, as well as numerous public NHTSA complaints and individual lawsuits, as detailed herein.~~

49. ~~Alternatively, any opportunity to cure the breach is unnecessary and futile.~~

50. ~~As a direct and proximate result of Defendants’ breach of the implied warranty of merchantability, South Carolina State Class members have been damaged in an amount to be proven at trial.~~

## **28. Tennessee**

### **TENNESSEE COUNT I:**

#### **Violations of the Tennessee Consumer Protection Act Tenn. Code Ann. § 47-18-101 *et seq.* (On Behalf of the Tennessee State Class)**

1. ~~Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set forth herein.~~

2. ~~Plaintiffs Gary Owens and Stephen Loyd (for the purposes of this count, “Plaintiffs”) bring this claim on behalf of themselves and the Tennessee State Class against all Defendants.~~

3. ~~Tennessee State Class members are “natural persons” and “consumers” within the meaning of Tenn. Code § 47-18-103(2). Defendants are “person[s]” within the meaning of Tenn. Code § 47-18-103(9).~~

4. ~~Defendants are engaged in “trade” or “commerce” or “consumer transactions” within the meaning Tenn. Code § 47-18-103(9).~~

5. ~~The Tennessee Consumer Protection Act (“Tennessee CPA”) prohibits “unfair or deceptive acts or practices affecting the conduct of any trade or commerce.” Tenn. Code § 47-18-104.~~

6. ~~In the course of their business, Defendants violated the Tennessee CPA by knowingly and intentionally misrepresenting, omitting, concealing, and/or failing to disclose material facts regarding the reliability, safety, and performance of the Class Vehicles, as detailed above.~~

7. ~~Specifically, by misrepresenting the Class Vehicles as safe and/or free from defects, and by failing to disclose and actively concealing the dangers and risk posed by the Class Vehicles and/or the SDM Calibration Defect, Defendants engaged in unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce, as prohibited by Tenn. Code § 47-18-104.~~

8. ~~Defendants’ unfair or deceptive acts or practices, including misrepresentations, concealments, omissions, and/or suppressions of material facts, had a tendency or capacity to mislead and create a false impression in consumers, and were likely to and did in fact deceive reasonable consumers, including Plaintiffs and Tennessee State Class members, about the true safety and reliability of Class Vehicles, the quality of the Class Vehicles, and the true value of the Class Vehicles.~~

9. ~~Defendants’ scheme and concealment of the SDM Calibration Defect and true characteristics of the passenger safety systems in the Class Vehicles were material to Plaintiffs~~

1 ~~and Tennessee State Class members, as the Defendants intended. Had they known the truth,~~  
 2 ~~Plaintiffs and Tennessee State Class members would not have purchased or leased the Class~~  
 3 ~~Vehicles, or would have paid significantly less for them.~~

4 ~~10.—Plaintiffs and Tennessee State Class members had no way of discerning that~~  
 5 ~~Defendants' representations were false and misleading and/or otherwise learning the facts that~~  
 6 ~~Defendants had concealed or failed to disclose. Plaintiffs and Tennessee State Class members did~~  
 7 ~~not, and could not, unravel Defendants' deception on their own.~~

8 ~~11.—Defendants had an ongoing duty to Plaintiffs and Tennessee State Class members~~  
 9 ~~to refrain from unfair or deceptive practices under the Tennessee CPA in the course of their~~  
 10 ~~business. Specifically, Defendants owed Plaintiffs and Tennessee State Class members a duty to~~  
 11 ~~disclose all the material facts concerning the SDM Calibration Defect in the Class Vehicles~~  
 12 ~~because they possessed exclusive knowledge, they intentionally concealed the defect from~~  
 13 ~~Plaintiffs and Tennessee State Class members, and/or they made misrepresentations that were~~  
 14 ~~misleading because they were contradicted by withheld facts.~~

15 ~~12.—Defendants' violations present a continuing risk to Plaintiffs and the Tennessee~~  
 16 ~~State Class as well as to the general public. Defendants' unlawful acts and practices complained~~  
 17 ~~of herein affect the public interest.~~

18 ~~13.—Tennessee State Class members suffered ascertainable loss and actual damages as~~  
 19 ~~a direct and proximate result of Defendants' misrepresentations and concealment of and failure to~~  
 20 ~~disclose material information. Defendants had an ongoing duty to all their customers to refrain~~  
 21 ~~from unfair and deceptive practices under the Tennessee CPA. All owners of Class Vehicles~~  
 22 ~~suffered ascertainable loss as a result of Defendants' deceptive and unfair acts and practices made~~  
 23 ~~in the course of Defendants' business.~~

24 ~~14.—Pursuant to Tenn. Code § 47-18-109, Plaintiffs and the Tennessee State Class~~  
 25 ~~seeks an order enjoining Defendants' unfair and/or deceptive acts or practices, damages, treble~~  
 26 ~~damages for willful and knowing violations, pursuant to § 47-18-109(a)(3), punitive damages,~~  
 27 ~~and attorneys' fees, costs, and any other just and proper relief to the extent available under the~~  
 28 ~~Tennessee CPA.~~

~~TENNESSEE COUNT II:  
Breach of Express Warranty  
Tenn. Code Ann. §§ 47-2-313 and 47-2A-210  
(On Behalf of the Tennessee State Class)~~

~~15. Plaintiffs re-allege and incorporate by reference all preceding allegations as though fully set forth herein.~~

~~16. Plaintiffs Gary Owens and Stephen Loyd (for the purposes of this count, “Plaintiffs”) bring this claim on behalf of themselves and the Tennessee State Class against all Defendants.~~

~~17. Defendants are and were at all relevant times “merchant[s]” with respect to motor vehicles under Tenn. Code §§ 47-2-104(1) and 47-2A-103(1)(t), and “sellers” of motor vehicles under § 47-2-103(1)(d).~~

~~18. With respect to leases, Defendants are and were at all relevant times “lessors” of motor vehicles under Tenn. Code § 47-2A-103(1)(p).~~

~~19. The Class Vehicles are and were at all relevant times “goods” within the meaning of Tenn. Code §§ 47-2-105(1) and 47-2A-103(1)(h).~~

~~20. In connection with the purchase or lease of Class Vehicles, the Defendants provided Plaintiffs and Tennessee State Class members with written express warranties covering the repair or replacement of components that are defective in materials or workmanship.~~

~~21. Defendants’ warranties formed the basis of the bargain that was reached when Plaintiffs and Tennessee State Class members unknowingly purchased or leased Class Vehicles that came equipped with the SDM Calibration Defect.~~

~~22. However, Defendants knew or should have known that the warranties were false and/or misleading. Specifically, Defendants were aware of the SDM Calibration Defect in the Class Vehicles, which made the vehicles inherently defective and dangerous at the time that they were sold and leased to Plaintiffs and Tennessee State Class members.~~

~~23. Plaintiffs and Tennessee State Class members reasonably relied on the Defendants’ express warranties when purchasing or leasing their Class Vehicles.~~

24. ~~Defendants knowingly breached their express warranties to repair defects in materials and workmanship by failing to repair the SDM Calibration Defect in the Class Vehicles. Defendants also breached their express warranties by providing a product containing defects that were never disclosed to Plaintiffs and Tennessee State Class members.~~

25. ~~Plaintiffs and Tennessee State Class members have provided the Defendants with reasonable notice and opportunity to cure the breaches of their express warranties by way of letter sent by Plaintiffs on August 20, 2021 and numerous public NHTSA complaints.~~

26. ~~Alternatively, any opportunity to cure the breach is unnecessary and futile.~~

27. ~~As a direct and proximate result of the Defendants' breach of express warranties, Plaintiffs and Tennessee State Class members have been damaged in an amount to be proven at trial.~~

**TENNESSEE COUNT III:  
Breach of Implied Warranty of Merchantability  
Tenn. Code Ann. §§ 47-2-314 and 47-2A-212  
(On Behalf of the Tennessee State Class)**

28. ~~Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set forth herein.~~

29. ~~Plaintiffs Gary Owens and Stephen Loyd (for the purposes of this count, "Plaintiffs") bring this claim on behalf of themselves and the Tennessee State Class against all Defendants.~~

30. ~~Defendants are and were at all relevant times "merchant[s]" with respect to motor vehicles under Tenn. Code §§ 47-2-104(1) and 47-2A-103(1)(t), and "sellers" of motor vehicles under § 47-2-103(1)(d).~~

31. ~~With respect to leases, Defendants are and were at all relevant times "lessors" of motor vehicles under Tenn. Code § 47-2A-103(1)(p).~~

32. ~~The Class Vehicles are and were at all relevant times "goods" within the meaning of Tenn. Code §§ 47-2-105(1) and 47-2A-103(1)(h).~~

33. ~~A warranty that the Class Vehicles were in merchantable condition and fit for the ordinary purpose for which vehicles are used is implied by law pursuant to Tenn. Code §§ 47-2-314 and 47-2A-212.~~

34. ~~The Class Vehicles did not comply with the implied warranty of merchantability because, at the time of sale and at all times thereafter, they were defective and not in merchantable condition, would not pass without objection in the trade, and were not fit for the ordinary purpose for which vehicles were used. Specifically, the Class Vehicles suffer from the SDM Calibration Defect, which may cause the airbags and seatbelt to fail to deploy during an accident, rendering the Class Vehicles inherently defective and dangerous.~~

35. ~~Defendants were provided reasonable notice of these issues by way of a letter sent by Plaintiffs on August 20, 2021 and numerous public NHTSA complaints.~~

36. ~~Alternatively, any opportunity to cure the breach is unnecessary and futile.~~

37. ~~As a direct and proximate result of Defendants' breach of the implied warranty of merchantability, Plaintiffs and Tennessee State Class members have been damaged in an amount to be proven at trial.~~

## **29. Texas**

### **TEXAS COUNT I:**

#### **Violations of the Deceptive Trade Practices Act Tex. Bus. & Com. Code § 17.41, *et seq.* (On Behalf of the Texas State Class)**

1. ~~Plaintiffs reallege and incorporate by reference all preceding allegations as though fully set forth herein.~~

2. ~~Plaintiffs Ira Bondsteel, Ric Batten, Larry Paetzold (for the purposes of this count, "Plaintiffs") bring this claim on behalf of themselves and the Texas State Class against all Defendants.~~

3. ~~Plaintiffs and the Texas State Class are "consumers" pursuant to Tex. Bus. & Com. Code § 17.45(4); Tex. Bus. & Com. Code § 17.41.~~

4. ~~Defendants are "person[s]" within the meaning of Tex. Bus. & Com. Code § 17.45(3).~~

1           ~~5. Defendants engaged in “trade” or “commerce” or “consumer transactions” within~~  
 2 ~~the meaning Tex. Bus. & Com. Code § 17.46(a).~~

3           ~~6. The Texas Deceptive Trade Practices—Consumer Protection Act (“Texas DTPA”)~~  
 4 ~~prohibits “false, misleading, or deceptive acts or practices in the conduct of any trade or~~  
 5 ~~commerce,” Tex. Bus. & Com. Code § 17.46(a), and an “unconscionable action or course of~~  
 6 ~~action,” which means “an act or practice which, to a consumer’s detriment, takes advantage of the~~  
 7 ~~lack of knowledge, ability, experience, or capacity of the consumer to a grossly unfair degree.”~~  
 8 ~~Tex. Bus. & Com. Code §§ 17.45(5) and 17.50(a)(3).~~

9           ~~7. In the course of their business, Defendants concealed and suppressed material facts~~  
 10 ~~concerning the Class Vehicles, as detailed above. Specifically, Defendants misrepresented the~~  
 11 ~~Class Vehicles as safe and/or free from defects and failed to disclose and actively concealed the~~  
 12 ~~dangers and risk posed by the Class Vehicles and/or the SDM Calibration Defect, including~~  
 13 ~~serious injury or death. These acts and practices were unconscionable, and to the Texas Plaintiffs’~~  
 14 ~~and Texas State Class members’ detriment, took advantage of their lack of knowledge, ability,~~  
 15 ~~experience, or capacity to a grossly unfair degree.~~

16           ~~8. Defendants thus violated the Act by, at minimum:~~

17           ~~a. representing that Class Vehicles have characteristics, uses, benefits, and~~  
 18 ~~qualities which they do not have;~~

19           ~~b. representing that Class Vehicles are of a particular standard, quality, and~~  
 20 ~~grade when they are not;~~

21           ~~c. advertising Class Vehicles with the intent not to sell or lease them as~~  
 22 ~~advertised.~~

23 ~~Tex. Bus. & Com. Code Ann. §§ 17.46(5), (7), and (9).~~

24           ~~9. Defendants intentionally and knowingly misrepresented material facts regarding~~  
 25 ~~the Class Vehicles with intent to mislead Plaintiffs and the Texas State Class.~~

26           ~~10. Defendants knew or should have known that their conduct violated the Texas~~  
 27 ~~DTPA.~~

1 ~~11.—Plaintiffs and Texas State Class members had no way of discerning that the~~  
2 ~~Defendants’ representations were false and misleading and/or otherwise learning the facts that the~~  
3 ~~Defendants had concealed or failed to disclose. Plaintiffs and Texas State Class members did not,~~  
4 ~~and could not, unravel the Defendants’ deception on their own.~~

5 ~~12.—Defendants owed Plaintiffs and the Texas State Class a duty to disclose the safety~~  
6 ~~risks associated with the SDM Calibration Defect, the true nature of the Class Vehicles, because~~  
7 ~~Defendants possessed exclusive knowledge that they were manufacturing, selling, and~~  
8 ~~distributing vehicles throughout the United States that did not perform as advertised; intentionally~~  
9 ~~concealed the foregoing from regulators and Texas State Class members; and/or made incomplete~~  
10 ~~representations about the Class Vehicles’ airbag and safety features while purposefully~~  
11 ~~withholding material facts that contradicted these representations.~~

12 ~~13.—Defendants’ concealment of the true characteristics of the Class Vehicles’ safety~~  
13 ~~systems was material to Plaintiffs and the Texas State Class.~~

14 ~~14.—Defendants’ unfair or deceptive acts or practices were likely to and did in fact~~  
15 ~~deceive regulators and reasonable consumers, including Plaintiffs and the Texas State Class,~~  
16 ~~about the true safety features of the Class Vehicles, the quality of the Defendants’ brands, and the~~  
17 ~~true value of the Class Vehicles.~~

18 ~~15.—Defendants’ violations present a continuing risk to Plaintiffs and the Texas State~~  
19 ~~Class as well as to the general public. Defendants’ unlawful acts and practices complained of~~  
20 ~~herein affect the public interest.~~

21 ~~16.—Plaintiffs and Texas State Class members suffered ascertainable loss and actual~~  
22 ~~damages as a direct and proximate result of Defendants’ misrepresentations and concealment of~~  
23 ~~and failure to disclose material information.~~

24 ~~17.—Pursuant to Tex. Bus. & Com. Code § 17.50, the Texas State Class seeks an order~~  
25 ~~enjoining Defendants’ unfair and/or deceptive acts or practices, damages, multiple damages for~~  
26 ~~knowing and intentional violations, pursuant to § 17.50(b)(1), punitive damages, and attorneys’~~  
27 ~~fees, costs, and any other just and proper relief available under the Texas DTPA.~~  
28



18. Pursuant to Tex. Bus. & Com. Code Ann. § 17.505, Plaintiffs sent notice letters to Defendants informing them of the issues raised in this count and this Complaint on August 20, 2021, as well as numerous public NHTSA complaints and individual lawsuits, as detailed herein. The Texas State Class seeks all damages and relief to which it is entitled.

**TEXAS COUNT II:  
Breach of Express Warranty  
Tex. Bus. & Com. Code §§ 2.313 and 2A.210  
(On Behalf of the Texas State Class)**

19. Plaintiffs reallege and incorporate by reference all preceding allegations as though fully set forth herein.

20. Plaintiffs Ira Bondsteel, Ric Batten, Larry Paetzold (for the purposes of this count, “Plaintiffs”) bring this claim on behalf of themselves and the Texas State Class against all Defendants.

21. Defendants are and were at all relevant times “merchant[s]” with respect to motor vehicles under Tex. Bus. & Com. Code §§ 2.104(1) and 2A.103(a)(20), and “sellers” of motor vehicles under § 2.103(a)(4).

22. With respect to leases, Defendants are and were at all relevant times “lessors” of motor vehicles under Tex. Bus. & Com. Code § 2A.103(a)(16).

23. All Texas State Class members who purchased Class Vehicles are “buyers” within the meaning of Tex. Bus. & Com. Code Ann. § 2.103(a)(1).

24. All Texas State Class members who leased Class Vehicles “lessees” within the meaning of Tex. Bus. & Com. Code Ann. § 2A.103(a)(14).

25. The Class Vehicles are and were at all relevant times “goods” within the meaning of Tex. Bus. & Com. Code §§ 2.105(a) and 2A.103(a)(8).

26. In connection with the purchase or lease of Class Vehicles, the Defendants provided Plaintiffs and Texas State Class members with written express warranties covering the repair or replacement of components that are defective in materials or workmanship.

27. ~~Defendants' warranties formed the basis of the bargain that was reached when Plaintiffs and Texas State Class members unknowingly purchased or leased Class Vehicles that came equipped with the SDM Calibration Defect.~~

28. ~~However, Defendants knew or should have known that the warranties were false and/or misleading. Specifically, Defendants were aware of the SDM Calibration Defect in the Class Vehicles, which made the vehicles inherently defective and dangerous at the time that they were sold and leased to Plaintiffs and Texas State Class members.~~

29. ~~Plaintiffs and Texas State Class members reasonably relied on the Defendants' express warranties when purchasing or leasing their Class Vehicles.~~

30. ~~Defendants knowingly breached their express warranties to repair defects in materials and workmanship by failing to repair the SDM Calibration Defect in the Class Vehicles. Defendants also breached their express warranties by providing a product containing defects that were never disclosed to Plaintiffs and Texas State Class members.~~

31. ~~Plaintiffs and Texas State Class members have provided the Defendants with reasonable notice and opportunity to cure the breaches of their express warranties by way of letter sent by Plaintiffs on August 20, 2021. Defendants are further on notice due to numerous public NHTSA complaints and individual lawsuits, as detailed herein.~~

32. ~~Alternatively, any opportunity to cure the breach is unnecessary and futile.~~

33. ~~As a direct and proximate result of Defendants' breach of express warranties, Plaintiffs and Texas State Class members have been damaged in an amount to be proven at trial.~~

### **TEXAS COUNT III:**

#### **Breach of Implied Warranty of Merchantability Tex. Bus. & Com. Code §§ 2.314 and 2A.212 (On Behalf of the Texas State Class)**

34. ~~Plaintiffs reallege and incorporate by reference all preceding allegations as though fully set forth herein.~~

35. ~~Plaintiffs Ira Bondsteel, Ric Batten, Larry Paetzold (for the purposes of this count, "Plaintiffs") bring this claim on behalf of themselves and the Texas State Class against all Defendants.~~

1           ~~36.—Defendants are and were at all relevant times “merchant[s]” with respect to motor~~  
2 ~~vehicles under Tex. Bus. & Com. Code §§ 2.104(1) and 2A.103(a)(20), and “sellers” of motor~~  
3 ~~vehicles under § 2.103(a)(4)~~

4           ~~37.—With respect to leases, Defendants are and were at all relevant times “lessors” of~~  
5 ~~motor vehicles under Tex. Bus. & Com. Code § 2A.103(a)(16).~~

6           ~~38.—All Texas State Class members who purchased Class Vehicles are “buyers” within~~  
7 ~~the meaning of Tex. Bus. & Com. Code Ann. § 2.103(a)(1).~~

8           ~~39.—All Texas State Class members who leased Class Vehicles “lessees” within the~~  
9 ~~meaning of Tex. Bus. & Com. Code Ann. § 2A.103(a)(14).~~

10           ~~40.—The Class Vehicles are and were at all relevant times “goods” within the meaning~~  
11 ~~of Tex. Bus. & Com. Code §§ 2.105(a) and 2A.103(a)(8).~~

12           ~~41.—A warranty that the Class Vehicles were in merchantable condition and fit for the~~  
13 ~~ordinary purpose for which vehicles are used is implied by law pursuant to Tex. Bus. & Com.~~  
14 ~~Code §§ 2.314 and 2A.212.~~

15           ~~42.—The Class Vehicles did not comply with the implied warranty of merchantability~~  
16 ~~because, at the time of sale and at all times thereafter, they were defective and not in~~  
17 ~~merchantable condition, would not pass without objection in the trade, and were not fit for the~~  
18 ~~ordinary purpose for which vehicles were used. Specifically, the Class Vehicles suffer from the~~  
19 ~~SDM Calibration Defect, which may cause the airbags and seatbelt to fail to deploy during an~~  
20 ~~accident, rendering the Class Vehicles inherently defective and dangerous.~~

21           ~~43.—Defendants were provided reasonable notice of these issues by way of a letter sent~~  
22 ~~by Plaintiffs on August 20, 2021, as well as numerous public NHTSA complaints and individual~~  
23 ~~lawsuits, as detailed herein.~~

24           ~~44.—Alternatively, any opportunity to cure the breach is unnecessary and futile.~~

25           ~~45.—As a direct and proximate result of Defendants’ breach of the implied warranty of~~  
26 ~~merchantability, Plaintiffs and Texas State Class members have been damaged in an amount to be~~  
27 ~~proven at trial.~~

**30. Utah****UTAH COUNT I:****Violations of the Utah Consumer Sales Practices Act  
Utah Code Ann. §§ 13-11-1 *et seq.*  
(On Behalf of the Utah State Class)**

1. Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set forth herein.

2. Plaintiff Delana Petersen (for the purposes of this count, “Plaintiff”) brings this claim on behalf of herself and the Utah State Class against all Defendants.

3. Plaintiff and Utah State Class members are “persons” under the Utah Consumer Sales Practices Act (“Utah CSPA”), Utah Code § 13-11-3(5). The sales and leases of the Class Vehicles to Plaintiff and Utah State Class members were “consumer transactions” within the meaning of Utah Code § 13-11-3(2).

4. Defendants are “supplier[s]” within the meaning of Utah Code § 13-11-3(6).

5. The Utah CSPA makes unlawful any “deceptive act or practice by a supplier in connection with a consumer transaction.” Specifically, “a supplier commits a deceptive act or practice if the supplier knowingly or intentionally: (a) indicates that the subject of a consumer transaction has sponsorship, approval, performance characteristics, accessories, uses, or benefits, if it has not” or “(b) indicates that the subject of a consumer transaction is of a particular standard, quality, grade, style, or model, if it is not.” Utah Code § 13-11-4. “An unconscionable act or practice by a supplier in connection with a consumer transaction” also violates the Utah CSPA. Utah Code § 13-11-5.

6. In the course of their business, Defendants violated the Utah CSPA by knowingly and intentionally misrepresenting, omitting, concealing, and/or failing to disclose material facts regarding the reliability, safety, and performance of the Class Vehicles, as detailed above.

7. Specifically, by misrepresenting the Class Vehicles as safe and/or free from defects, and by failing to disclose and actively concealing the dangers and risk posed by the Class Vehicles and/or the SDM Calibration Defect, Defendants engaged in unfair methods of

1 ~~competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the~~  
2 ~~conduct of any trade or commerce, as prohibited by the Utah CSPA.~~

3 ~~8. Defendants' unfair or deceptive acts or practices, including misrepresentations,~~  
4 ~~concealments, omissions, and/or suppressions of material facts, had a tendency or capacity to~~  
5 ~~mislead and create a false impression in consumers, and were likely to and did in fact deceive~~  
6 ~~reasonable consumers, including Plaintiff and Utah State Class members, about the true safety~~  
7 ~~and reliability of Class Vehicles, the quality of the Class Vehicles, and the true value of the Class~~  
8 ~~Vehicles.~~

9 ~~9. Defendants' scheme and concealment of the SDM Calibration Defect and true~~  
10 ~~characteristics of the passenger safety systems in the Class Vehicles were material to Plaintiff and~~  
11 ~~Utah State Class members, as the Defendants intended. Had they known the truth, Plaintiff and~~  
12 ~~Utah State Class members would not have purchased or leased the Class Vehicles, or would have~~  
13 ~~paid significantly less for them.~~

14 ~~10. Plaintiff and Utah State Class members had no way of discerning that Defendants'~~  
15 ~~representations were false and misleading and/or otherwise learning the facts that Defendants had~~  
16 ~~concealed or failed to disclose. Plaintiff and Utah State Class members did not, and could not,~~  
17 ~~unravel Defendants' deception on their own.~~

18 ~~11. Defendants had an ongoing duty to Plaintiff and Utah State Class members to~~  
19 ~~refrain from unfair or deceptive practices under the Utah CSPA in the course of their business.~~  
20 ~~Specifically, Defendants owed Plaintiff and Utah State Class members a duty to disclose all the~~  
21 ~~material facts concerning the SDM Calibration Defect in the Class Vehicles because they~~  
22 ~~possessed exclusive knowledge, they intentionally concealed the defect from Plaintiff and Utah~~  
23 ~~State Class members, and/or they made misrepresentations that were misleading because they~~  
24 ~~were contradicted by withheld facts.~~

25 ~~12. Defendants' violations present a continuing risk to Plaintiff and Utah State Class~~  
26 ~~members, as well as to the general public. Defendants' unlawful acts and practices complained of~~  
27 ~~herein affect the public interest.~~

~~13. Plaintiff and Utah State Class members suffered ascertainable loss and actual damages as a direct and proximate result of Defendants' misrepresentations and concealment of and failure to disclose material information. Defendants had an ongoing duty to all their customers to refrain from unfair and deceptive practices under the Utah CSPA. All owners of Class Vehicles suffered ascertainable loss as a result of Defendants' deceptive and unfair acts and practices made in the course of Defendants' business.~~

~~14. Pursuant to Utah Code Ann. § 13-11-4, Plaintiff and the Utah State Class seeks monetary relief against Defendants measured as the greater of (a) actual damages in an amount to be determined at trial and (b) statutory damages in the amount of \$2,000 for each Utah State Class member, reasonable attorneys' fees, and any other just and proper relief available under the Utah CSPA.~~

**UTAH COUNT II:  
Breach of Express Warranty  
Utah Code §§ 70A-2-313 and 70-2A-210  
(On Behalf of the Utah State Class)**

~~15. Plaintiffs re-allege and incorporate by reference all preceding allegations as though fully set forth herein.~~

~~16. Plaintiff Delana Petersen (for the purposes of this count, "Plaintiff") brings this claim on behalf of himself and the Utah State Class against all Defendants.~~

~~17. Defendants are and were at all relevant times "merchant[s]" with respect to motor vehicles under Utah Code § 70A-2-104(1) and 70A-2a-103(1)(t), and "sellers" of motor vehicles under § 70A-2-103(1)(d).~~

~~18. With respect to leases, Defendants are and were at all relevant times "lessors" of motor vehicles under Utah Code § 70A-2a-103(1)(p).~~

~~19. The Class Vehicles are and were at all relevant times "goods" within the meaning of Utah Code §§ 70A-2-105(1) and 70A-2a-103(1)(h).~~

~~20. In connection with the purchase or lease of Class Vehicles, Defendants provided Plaintiff and Utah State Class members with written express warranties covering the repair or replacement of components that are defective in materials or workmanship.~~

21. ~~Defendants' warranties formed the basis of the bargain that was reached when Plaintiff and Utah State Class members unknowingly purchased or leased Class Vehicles that came equipped with the SDM Calibration Defect.~~

22. ~~However, Defendants knew or should have known that the warranties were false and/or misleading. Specifically, Defendants were aware of the SDM Calibration Defect in the Class Vehicles, which made the vehicles inherently defective and dangerous at the time that they were sold and leased to Plaintiff and Utah State Class members.~~

23. ~~Plaintiff and Utah State Class members reasonably relied on the Defendants' express warranties when purchasing or leasing their Class Vehicles.~~

24. ~~Defendants knowingly breached their express warranties to repair defects in materials and workmanship by failing to repair the SDM Calibration Defect in the Class Vehicles. Defendants also breached their express warranties by providing a product containing defects that were never disclosed to Plaintiff and Utah State Class members.~~

25. ~~Plaintiff and Utah State Class members have provided the Defendants with reasonable notice and opportunity to cure the breaches of their express warranties by way of letter sent by Plaintiffs on August 20, 2021. Defendants are further on notice due to numerous public NHTSA complaints and individual lawsuits, as detailed herein.~~

26. ~~Alternatively, any opportunity to cure the breach is unnecessary and futile.~~

27. ~~As a direct and proximate result of the Defendants' breach of express warranties, Plaintiff and Utah State Class members have been damaged in an amount to be proven at trial.~~

### **UTAH COUNT III:**

#### **Breach of Implied Warranty of Merchantability Utah Code §§ 70A-2-314 and 70-2A-212 (On Behalf of the Utah State Class)**

28. ~~Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set forth herein.~~

29. ~~Plaintiff Delana Petersen (for the purposes of this count, "Plaintiff") brings this claim on behalf of herself and the Utah State Class against all Defendants.~~

30. ~~Defendants are and were at all relevant times “merchant[s]” with respect to motor vehicles under Utah Code §§ 70A-2-104(1) and 70A-2a-103(1)(t), and “sellers” of motor vehicles under § 70A-2-103(1)(d).~~

31. ~~With respect to leases, Defendants are and were at all relevant times “lessors” of motor vehicles under Utah Code § 70A-2a-103(1)(p).~~

32. ~~The Class Vehicles are and were at all relevant times “goods” within the meaning of Utah Code §§ 70A-2-105(1) and 70A-2a-103(1)(h).~~

33. ~~A warranty that the Class Vehicles were in merchantable condition and fit for the ordinary purpose for which vehicles are used is implied by law pursuant to Utah Code §§ 70A-2-314 and 70A-2a-212.~~

34. ~~The Class Vehicles did not comply with the implied warranty of merchantability because, at the time of sale and at all times thereafter, they were defective and not in merchantable condition, would not pass without objection in the trade, and were not fit for the ordinary purpose for which vehicles were used. Specifically, the Class Vehicles suffer from the SDM Calibration Defect, which may cause the airbags and seatbelt to fail to deploy during an accident, rendering the Class Vehicles inherently defective and dangerous.~~

35. ~~Defendants were provided reasonable notice of these issues by way of a letter sent by Plaintiffs on August 20, 2021 and numerous public NHTSA complaints.~~

36. ~~Alternatively, any opportunity to cure the breach is unnecessary and futile.~~

37. ~~As a direct and proximate result of Defendants’ breach of the implied warranty of merchantability, Plaintiff and Utah State Class members have been damaged in an amount to be proven at trial.~~

### **31. ~~Virginia~~**

#### **~~VIRGINIA COUNT I: Violations of the Virginia Consumer Protection Act Va. Code Ann. §§ 59.1-196 et seq. (On Behalf of the Virginia State Class)~~**

1. ~~Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.~~



1           2.——~~Plaintiffs Eric Leeds, Douglas Dye, Debra Knerr, and Ira Nash (for the purposes of~~  
2 ~~this count, “Plaintiffs”)~~ bring this claim on behalf of themselves and the Virginia State Class  
3 ~~against all Defendants.~~

4           3.——~~Defendants and the Virginia State Class are “persons” within the meaning of Va.~~  
5 ~~Code § 59.1-198.~~

6           4.——~~Defendants are “supplier[s]” within the meaning of Va. Code § 59.1-198.~~

7           5.——~~The Virginia Consumer Protection Act (“Virginia CPA”) makes unlawful~~  
8 ~~“fraudulent acts or practices.” Va. Code § 59.1-200(A).~~

9           6.——~~In the course of their business, Defendants violated the Virginia CPA by~~  
10 ~~knowingly and intentionally misrepresenting, omitting, concealing, and/or failing to disclose~~  
11 ~~material facts regarding the reliability, safety, and performance of the Class Vehicles, as detailed~~  
12 ~~above.~~

13           7.——~~Specifically, by misrepresenting the Class Vehicles as safe and/or free from~~  
14 ~~defects, and by failing to disclose and actively concealing the dangers and risk posed by the Class~~  
15 ~~Vehicles and/or the SDM Calibration Defect, Defendants engaged in one or more unfair or~~  
16 ~~deceptive business practices prohibited by the Virginia CPA.~~

17           8.——~~Defendants’ unfair or deceptive acts or practices, including misrepresentations,~~  
18 ~~concealments, omissions, and/or suppressions of material facts, had a tendency or capacity to~~  
19 ~~mislead and create a false impression in consumers, and were likely to and did in fact deceive~~  
20 ~~reasonable consumers, including the Plaintiffs and Virginia State Class members, about the true~~  
21 ~~safety and reliability of Class Vehicles, the quality of the Class Vehicles, and the true value of the~~  
22 ~~Class Vehicles.~~

23           9.——~~Defendants’ scheme and concealment of the SDM Calibration Defect in the Class~~  
24 ~~Vehicles were material to the Plaintiffs and Virginia State Class members, as Defendants~~  
25 ~~intended. Had they known the truth, Plaintiffs and Virginia State Class members would not have~~  
26 ~~purchased or leased the Class Vehicles, or would have paid significantly less for them.~~

27           10.——~~Plaintiffs and Virginia State Class members had no way of discerning that the~~  
28 ~~Defendants’ representations were false and misleading and/or otherwise learning the facts that the~~

~~Defendants had concealed or failed to disclose. Plaintiffs and Virginia State Class members did not, and could not, unravel the Defendants' deception on their own.~~

~~11.—Defendants had an ongoing duty to Plaintiffs and Virginia State Class members to refrain from unfair or deceptive practices under the Virginia CPA in the course of their business. Specifically, Defendants owed Plaintiffs and Virginia State Class members a duty to disclose all the material facts concerning the SDM Calibration Defect in the Class Vehicles because they possessed exclusive knowledge, they intentionally concealed the defect from Plaintiffs and Virginia State Class members, and/or they made misrepresentations that were misleading because they were contradicted by withheld facts.~~

~~12.—Defendants thus violated the Act by, at minimum: representing that Class Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that Class Vehicles are of a particular standard, quality, and grade when they are not; advertising Class Vehicles with the intent not to sell or lease them as advertised; and representing that the subject of a transaction involving Class Vehicles has been supplied in accordance with a previous representation when it has not.~~

~~13.—Defendants intentionally and knowingly misrepresented material facts regarding the Class Vehicles with intent to mislead the Virginia State Class.~~

~~14.—Defendants knew or should have known that their conduct violated the Virginia CPA.~~

~~15.—Defendants' violations present a continuing risk to the Virginia State Class as well as to the general public. Defendants' unlawful acts and practices complained of herein affect the public interest.~~

~~16.—Virginia State Class members suffered ascertainable loss and actual damages as a direct and proximate result of Defendants' misrepresentations and concealment of and failure to disclose material information. Defendants had an ongoing duty to all their customers to refrain from unfair and deceptive practices under the Virginia CPA. All owners of Class Vehicles suffered ascertainable loss as a result of Defendants' deceptive and unfair acts and practices made in the course of Defendants' business.~~

17. ~~Pursuant to Va. Code § 59.1-204(A)–(B), the Virginia State Class is entitled to the greater of actual damages or \$500 for each Virginia State Class member, attorneys’ fees, and costs. Because Defendants’ actions were willful, Virginia State Class members should each receive the greater of treble damages or \$1,000. *Id.*~~

**VIRGINIA COUNT II:  
Breach of Express Warranty  
Va. Code §§ 8.2-313 and 8.2A-210  
(On Behalf of the Virginia State Class)**

18. ~~Plaintiffs re-allege and incorporate by reference all preceding allegations as though fully set forth herein.~~

19. ~~Plaintiffs Eric Leeds, Douglas Dye, Debra Knerr, and Ira Nash (for the purposes of this count, “Plaintiffs”) bring this claim on behalf of themselves and the Virginia State Class against all Defendants.~~

20. ~~Defendants are and were at all relevant times “merchant[s]” with respect to motor vehicles under Va. Code §§ 8.2-104(1) and 8.2A-103(1)(t), and “sellers” of motor vehicles under § 8.2-103(1)(d).~~

21. ~~With respect to leases, Defendants are and were at all relevant times “lessors” of motor vehicles under Va. Code § 8.2A-103(1)(p).~~

22. ~~The Class Vehicles are and were at all relevant times “goods” within the meaning of Va. Code §§ 8.2-105(1) and 8.2A-103(1)(h).~~

23. ~~In connection with the purchase or lease of Class Vehicles, the Defendants provided Plaintiffs and Virginia State Class members with written express warranties covering the repair or replacement of components that are defective in materials or workmanship.~~

24. ~~Defendants’ warranties formed a basis of the bargain that was reached when Plaintiffs and Virginia State Class members unknowingly purchased or leased Class Vehicles that came equipped with the SDM Calibration Defect.~~

25. ~~However, Defendants knew or should have known that the warranties were false and/or misleading. Specifically, Defendants were aware of the SDM Calibration Defect in the~~

~~Class Vehicles, which made the vehicles inherently defective and dangerous at the time that they were sold and leased to Plaintiffs and Virginia State Class members.~~

~~26.—Plaintiffs and Virginia State Class members reasonably relied on the Defendants’ express warranties when purchasing or leasing their Class Vehicles.~~

~~27.—Defendants knowingly breached their express warranties to repair defects in materials and workmanship by failing to repair the SDM Calibration Defect in the Class Vehicles. Defendants also breached their express warranties by providing a product containing defects that were never disclosed to Plaintiffs and Virginia State Class members.~~

~~28.—Plaintiffs and Virginia State Class members have provided the Defendants with reasonable notice and opportunity to cure the breaches of their express warranties by way of letter sent by Plaintiffs on August 20, 2021 and numerous public NHTSA complaints.~~

~~29.—Alternatively, any opportunity to cure the breach is unnecessary and futile.~~

~~30.—As a direct and proximate result of Defendants’ breach of express warranties, Plaintiffs and Virginia State Class members have been damaged in an amount to be determined at trial.~~

**VIRGINIA COUNT III:  
Breach of Implied Warranty of Merchantability  
Va. Code §§ 8.2-314 and 8.2A-212  
(On Behalf of the Virginia State Class)**

~~31.—Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set forth herein.~~

~~32.—Plaintiffs Eric Leeds, Douglas Dye, Debra Knerr, and Ira Nash (for the purposes of this count, “Plaintiffs”) bring this claim on behalf of themselves and the Virginia State Class against all Defendants.~~

~~33.—Defendants are and were at all relevant times “merchant[s]” with respect to motor vehicles under Va. Code §§ 8.2-104(1) and 8.2A-103(1)(t), and “sellers” of motor vehicles under § 8.2-103(1)(d).~~

~~34.—With respect to leases, Defendants are and were at all relevant times “lessors” of motor vehicles under Va. Code § 8.2A-103(1)(p).~~

35. ~~The Class Vehicles are and were at all relevant times “goods” within the meaning of Va. Code §§ 8.2-105(1) and 8.2A-103(1)(h).~~

36. ~~A warranty that the Class Vehicles were in merchantable condition and fit for the ordinary purpose for which vehicles are used is implied by law pursuant to Va. Code §§ 8.2-314 and 8.2A-212.~~

37. ~~The Class Vehicles did not comply with the implied warranty of merchantability because, at the time of sale and at all times thereafter, they were defective and not in merchantable condition, would not pass without objection in the trade, and were not fit for the ordinary purpose for which vehicles were used. Specifically, the Class Vehicles suffer from the SDM Calibration Defect, which may cause the airbags and seatbelt to fail to deploy during an accident, rendering the Class Vehicles inherently defective and dangerous.~~

38. ~~Defendants were provided reasonable notice of these issues by way of a letter sent by Plaintiffs on August 20, 2021, as well as numerous public NHTSA complaints and individual lawsuits, as detailed herein.~~

39. ~~Alternatively, any opportunity to cure the breach is unnecessary and futile.~~

40. ~~As a direct and proximate result of Defendants’ breach of the implied warranty of merchantability, Plaintiffs and Virginia State Class members have been damaged in an amount to be proven at trial.~~

### 32. ~~Washington~~

#### ~~WASHINGTON STATE COUNT I: Violations of the Washington Consumer Protection Act Wash. Rev. Code Ann. § 19.86.010 et seq. (On Behalf of the Washington State Class)~~

1. ~~Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set forth herein.~~

2. ~~Plaintiffs Ashley Dheel and Kara Hummel (for the purposes of this count, “Plaintiffs”) bring this claim on behalf of themselves and the Washington State Class against all Defendants.~~

1           ~~3. Defendants and the Washington State Class are “persons” within the meaning of~~  
2 ~~Wash. Rev. Code § 19.86.010(2).~~

3           ~~4. Defendants engaged in “trade” or “commerce” within the meaning of Wash. Rev.~~  
4 ~~Code § 19.86.010(2).~~

5           ~~5. The Washington Consumer Protection Act (“Washington CPA”) makes unlawful~~  
6 ~~“[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any~~  
7 ~~trade or commerce.” Wash. Rev. Code § 19.86.020.~~

8           ~~6. In the course of their business, Defendants violated the Washington CPA by~~  
9 ~~knowingly and intentionally misrepresenting, omitting, concealing, and/or failing to disclose~~  
10 ~~material facts regarding the reliability, safety, and performance of the Class Vehicles, as detailed~~  
11 ~~above.~~

12           ~~7. Specifically, by misrepresenting the Class Vehicles as safe and/or free from~~  
13 ~~defects, and by failing to disclose and actively concealing the dangers and risk posed by the Class~~  
14 ~~Vehicles and/or the SDM Calibration Defect, Defendants engaged in unfair methods of~~  
15 ~~competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the~~  
16 ~~conduct of any trade or commerce, as prohibited by Wash. Rev. Code § 19.86.020.~~

17           ~~8. Defendants’ unfair or deceptive acts or practices, including misrepresentations,~~  
18 ~~concealments, omissions, and/or suppressions of material facts, had a tendency or capacity to~~  
19 ~~mislead and create a false impression in consumers, and were likely to and did in fact deceive~~  
20 ~~reasonable consumers, including Plaintiffs and Washington State Class members, about the true~~  
21 ~~safety and reliability of Class Vehicles, the quality of the Class Vehicles, and the true value of the~~  
22 ~~Class Vehicles.~~

23           ~~9. Defendants’ scheme and concealment of the SDM Calibration Defect and true~~  
24 ~~characteristics of the passenger safety systems in the Class Vehicles were material to Plaintiffs~~  
25 ~~and Washington State Class members, as the Defendants intended. Had they known the truth,~~  
26 ~~Plaintiffs and Washington State Class members would not have purchased or leased the Class~~  
27 ~~Vehicles, or would have paid significantly less for them.~~

1           ~~10.—Plaintiffs and Washington State Class members had no way of discerning that~~  
2           ~~Defendants’ representations were false and misleading and/or otherwise learning the facts that~~  
3           ~~Defendants had concealed or failed to disclose. Plaintiffs and Washington State Class members~~  
4           ~~did not, and could not, unravel Defendants’ deception on their own.~~

5           ~~11.—Defendants had an ongoing duty to Plaintiffs and Washington State Class members~~  
6           ~~to refrain from unfair or deceptive practices under the Washington CPA in the course of their~~  
7           ~~business. Specifically, Defendants owed Plaintiffs and Washington State Class members a duty to~~  
8           ~~disclose all the material facts concerning the SDM Calibration Defect in the Class Vehicles~~  
9           ~~because they possessed exclusive knowledge, they intentionally concealed the defect from~~  
10           ~~Plaintiffs and Washington State Class members, and/or they made misrepresentations that were~~  
11           ~~misleading because they were contradicted by withheld facts.~~

12           ~~12.—Defendants’ violations present a continuing risk to Plaintiffs and Washington State~~  
13           ~~Class members, as well as to the general public. Defendants’ unlawful acts and practices~~  
14           ~~complained of herein affect the public interest.~~

15           ~~13.—Washington State Class members suffered ascertainable loss and actual damages~~  
16           ~~as a direct and proximate result of Defendants’ misrepresentations and concealment of and failure~~  
17           ~~to disclose material information. Defendants had an ongoing duty to all their customers to refrain~~  
18           ~~from unfair and deceptive practices under the Washington CPA. All owners of Class Vehicles~~  
19           ~~suffered ascertainable loss as a result of Defendants’ deceptive and unfair acts and practices made~~  
20           ~~in the course of Defendants’ business.~~

21           ~~14.—Pursuant to Wash. Rev. Code § 19.86.090, the Washington State Class seeks an~~  
22           ~~order enjoining Defendants’ unfair and/or deceptive acts or practices, damages, punitive damages,~~  
23           ~~and attorneys’ fees, costs, and any other just and proper relief available under the Washington~~  
24           ~~CPA. Because Defendants’ actions were willful and knowing, Washington State Class members’~~  
25           ~~damages should be trebled.~~

**WASHINGTON STATE COUNT II:  
Washington Lemon Law  
Wash. Rev. Code § 19.118.005 *et seq.*  
(On Behalf of the Washington State Class)**

15. ~~Plaintiffs re-allege and incorporate by reference all preceding allegations as though fully set forth herein.~~

16. ~~Plaintiffs Ashley Dheel and Kara Hummel (for the purposes of this count, “Plaintiffs”) bring this claim on behalf of themselves and the Washington State Class against all Defendants.~~

17. ~~The Washington State Class own or lease “new motor vehicles” within the meaning of Wash. Rev. Code § 19.118.021(12), because these vehicles are self-propelled primarily designed for the transportation of persons or property over the public highways and were originally purchased or leased at retail from a new motor vehicle dealer or leasing company in Washington. These vehicles do not include vehicles purchased or leased by a business as part of a fleet of ten or more vehicles at one time or under a single purchase or lease agreement or those portions of a motor home designated, used, or maintained primarily as a mobile dwelling, office, or commercial space.~~

18. ~~Defendants are “manufacturer[s]” of the Class Vehicles within the meaning of Wash. Rev. Code § 19.118.021(8) because it is in the business of constructing or assembling new motor vehicles or is engaged in the business of importing new motor vehicles into the United States for the purpose of selling or distributing new motor vehicles to new motor vehicle dealers.~~

19. ~~The Washington State Class are “consumers” within the meaning of Wash. Rev. Code § 19.118.021(4) because they entered into an agreement or contract for the transfer, lease, or purchase of a new motor vehicle, other than for purposes of resale or sublease, during the eligibility period as defined by Wash. Rev. Code § 19.118.021(6).~~

20. ~~The Class Vehicles did not conform to their warranties as defined by Wash. Rev. Code § 19.118.021(22), during the “eligibility period,” defined by Wash. Rev. Code § 19.118.021(6), or the coverage period under the applicable written warranty because they~~



1 contained the SDM Calibration Defect. Wash. Rev. Code § 19.118.031. This Defect substantially  
2 impaired the use and market value of their motor vehicles.

3 21.—Defendants had actual knowledge of the SDM Calibration Defect during warranty  
4 periods. But the SDM Calibration Defect continued to exist throughout this term, as it has not  
5 been fixed. Washington State Class members are excused from notifying Defendants of the SDM  
6 Calibration Defect because they were already fully aware of the problem and any repair attempt is  
7 futile.

8 22.—Defendants have had a reasonable opportunity to cure the SDM Calibration Defect  
9 because of its actual knowledge of, creation of, and attempt to conceal the nonconformities, but  
10 has not done so as required under Wash. Rev. Code § 19.118.031.

11 23.—For vehicles purchased, the Washington State Class demands a full refund of the  
12 contract price, all collateral charges, and incidental costs. Wash. Rev. Code § 19.118.041(1)(b).  
13 For vehicles leased, the Washington State Class demands all payments made under the lease  
14 including but not limited to all lease payments, trade-in value or inception payment, security  
15 deposit, and all collateral charges and incidental costs. The consumer is also relieved of any  
16 future obligation to the lessor or lienholder. The Washington State Class rejects an offer of  
17 replacement and will retain their vehicles until payment is tendered.

18 **WASHINGTON STATE COUNT III:**  
19 **Breach of Express Warranty**  
20 **Wash. Rev. Code §§ 62A.2-313 and 62A.2A-210**  
21 **(On Behalf of the Washington State Class)**

22 24.—Plaintiffs re-allege and incorporate by reference all preceding allegations as though  
23 fully set forth herein.

24 25.—Plaintiffs Ashley Dheel and Kara Hummel (for the purposes of this count,  
25 “Plaintiffs”) bring this claim on behalf of themselves and the Washington State Class against all  
26 Defendants.

27 26.—Defendants are and were at all relevant times “merchant[s]” with respect to motor  
28 vehicles under Wash. Rev. Code §§ 62A.2-104(1) and 62A.2A-103(1)(t), and “sellers” of motor  
vehicles under § 2.103(a)(4).

1           ~~27.—With respect to leases, Defendants are and were at all relevant times “lessors” of~~  
2 ~~motor vehicles under Wash. Rev. Code § 62A.2A-103(1)(p).~~

3           ~~28.—The Class Vehicles are and were at all relevant times “goods” within the meaning~~  
4 ~~of Wash. Rev. Code §§ 62A.2-105(1) and 62A.2A-103(1)(h).~~

5           ~~29.—In connection with the purchase or lease of Class Vehicles, Defendants provided~~  
6 ~~Plaintiffs and Washington State Class members with written express warranties covering the~~  
7 ~~repair or replacement of components that are defective in materials or workmanship.~~

8           ~~30.—Defendants’ warranties formed the basis of the bargain that was reached when~~  
9 ~~Plaintiffs and Washington State Class members unknowingly purchased or leased Class Vehicles~~  
10 ~~that came equipped with the SDM Calibration Defect.~~

11           ~~31.—However, Defendants knew or should have known that the warranties were false~~  
12 ~~and/or misleading. Specifically, Defendants were aware of the SDM Calibration Defect in the~~  
13 ~~Class Vehicles, which made the vehicles inherently defective and dangerous at the time that they~~  
14 ~~were sold and leased to Plaintiffs and Washington State Class members.~~

15           ~~32.—Plaintiffs and Washington State Class members reasonably relied on the~~  
16 ~~Defendants’ express warranties when purchasing or leasing their Class Vehicles.~~

17           ~~33.—Defendants knowingly breached their express warranties to repair defects in~~  
18 ~~materials and workmanship by failing to repair the SDM Calibration Defect in the Class Vehicles.~~  
19 ~~Defendants also breached their express warranties by providing a product containing defects that~~  
20 ~~were never disclosed to Plaintiffs and Washington State Class members.~~

21           ~~34.—Plaintiffs and Washington State Class members have provided the Defendants with~~  
22 ~~reasonable notice and opportunity to cure the breaches of their express warranties by way of letter~~  
23 ~~sent by Plaintiffs on August 20, 2021. Defendants are further on notice due to numerous public~~  
24 ~~NHTSA complaints and individual lawsuits, as detailed herein.~~

25           ~~35.—Alternatively, any opportunity to cure the breach is unnecessary and futile.~~

26           ~~36.—As a direct and proximate result of the Defendants’ breach of express warranties,~~  
27 ~~Plaintiffs and Washington State Class members have been damaged in an amount to be proven at~~  
28 ~~trial.~~

**WASHINGTON STATE COUNT IV:  
Breach of Implied Warranty of Merchantability  
Wash. Rev. Code §§ 62A.2-314 and 62A.2A-212  
(On Behalf of the Washington State Class)**

37. ~~Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set forth herein.~~

38. ~~Plaintiffs Ashley Dheel and Kara Hummel (for the purposes of this count, “Plaintiffs”) bring this claim on behalf of themselves and the Washington State Class against all Defendants.~~

39. ~~Defendants are and were at all relevant times “merchant[s]” with respect to motor vehicles under Wash. Rev. Code § 62A.2-104(1) and 62A.2A-103(1)(t), and “sellers” of motor vehicles under § 2.103(a)(4).~~

40. ~~With respect to leases, Defendants are and were at all relevant times “lessors” of motor vehicles under Wash. Rev. Code § 62A.2A-103(1)(p).~~

41. ~~The Class Vehicles are and were at all relevant times “goods” within the meaning of Wash. Rev. Code §§ 62A.2-105(1) and 62A.2A-103(1)(h).~~

42. ~~A warranty that the Class Vehicles were in merchantable condition and fit for the ordinary purpose for which vehicles are used is implied by law pursuant to Wash. Rev. Code §§ 62A.2-314 and 62A.2A-212.~~

43. ~~The Class Vehicles did not comply with the implied warranty of merchantability because, at the time of sale and at all times thereafter, they were defective and not in merchantable condition, would not pass without objection in the trade, and were not fit for the ordinary purpose for which vehicles were used. Specifically, the Class Vehicles suffer from the SDM Calibration Defect, which may cause the airbags and seatbelt to fail to deploy during an accident, rendering the Class Vehicles inherently defective and dangerous.~~

44. ~~Defendants were provided reasonable notice of these issues by way of a letter sent by Plaintiffs on August 20, 2021.~~

45. ~~Alternatively, any opportunity to cure the breach is unnecessary and futile.~~

46. ~~As a direct and proximate result of Defendants' breach of the implied warranty of merchantability, Plaintiffs and Washington State Class members have been damaged in an amount to be proven at trial.~~

### **33. West Virginia**

#### **WEST VIRGINIA COUNT I: Violations of the West Virginia Consumer Credit and Protection Act W. Va. Code § 46A-1-101 *et seq.* (On Behalf of the West Virginia State Class)**

1. ~~Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set forth herein.~~

2. ~~Plaintiff John Hickey (for the purposes of this count, "Plaintiff") brings this claim on behalf of himself and the West Virginia State Class against all Defendants.~~

3. ~~Defendants and the West Virginia State Class are "persons" within the meaning of W. Va. Code § 46A-1-102(31). West Virginia State Class members are "consumers" within the meaning of W. Va. Code §§ 46A-1-102(2) and 46A-1-102(12).~~

4. ~~Defendants are engaged in "trade" or "commerce" within the meaning of W. Va. Code § 46A-6-102(6).~~

5. ~~The West Virginia Consumer Credit and Protection Act ("West Virginia CCPA") makes unlawful "[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce." W. Va. Code § 46A-6-104.~~

6. ~~In the course of their business, Defendants violated the West Virginia CCPA by knowingly and intentionally misrepresenting, omitting, concealing, and/or failing to disclose material facts regarding the reliability, safety, and performance of the Class Vehicles, as detailed above.~~

7. ~~Specifically, by misrepresenting the Class Vehicles as safe and/or free from defects, and by failing to disclose and actively concealing the dangers and risk posed by the Class Vehicles and/or the SDM Calibration Defect, Defendants engaged in unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce, as prohibited by W. Va. Code § 46A-6-104.~~

1           ~~8. Defendants' unfair or deceptive acts or practices, including misrepresentations,~~  
 2           ~~concealments, omissions, and/or suppressions of material facts, had a tendency or capacity to~~  
 3           ~~mislead and create a false impression in consumers, and were likely to and did in fact deceive~~  
 4           ~~reasonable consumers, including Plaintiff and West Virginia State Class members, about the true~~  
 5           ~~safety and reliability of Class Vehicles, the quality of the Class Vehicles, and the true value of the~~  
 6           ~~Class Vehicles.~~

7           ~~9. Defendants' scheme and concealment of the SDM Calibration Defect and true~~  
 8           ~~characteristics of the passenger safety systems in the Class Vehicles were material to Plaintiff and~~  
 9           ~~West Virginia State Class members, as the Defendants intended. Had they known the truth,~~  
 10           ~~Plaintiff and West Virginia State Class members would not have purchased or leased the Class~~  
 11           ~~Vehicles, or would have paid significantly less for them.~~

12           ~~10. Plaintiff and West Virginia State Class members had no way of discerning that~~  
 13           ~~Defendants' representations were false and misleading and/or otherwise learning the facts that~~  
 14           ~~Defendants had concealed or failed to disclose. Plaintiff and West Virginia State Class members~~  
 15           ~~did not, and could not, unravel Defendants' deception on their own.~~

16           ~~11. Defendants had an ongoing duty to Plaintiff and West Virginia State Class~~  
 17           ~~members to refrain from unfair or deceptive practices under the West Virginia CCPA in the~~  
 18           ~~course of their business. Specifically, Defendants owed Plaintiff and West Virginia State Class~~  
 19           ~~members a duty to disclose all the material facts concerning the SDM Calibration Defect in the~~  
 20           ~~Class Vehicles because they possessed exclusive knowledge, they intentionally concealed the~~  
 21           ~~defect from Plaintiff and West Virginia State Class members, and/or they made~~  
 22           ~~misrepresentations that were misleading because they were contradicted by withheld facts.~~

23           ~~12. Defendants' violations present a continuing risk to Plaintiff and West Virginia~~  
 24           ~~State Class members, as well as to the general public. Defendants' unlawful acts and practices~~  
 25           ~~complained of herein affect the public interest.~~

26           ~~13. West Virginia State Class members suffered ascertainable loss and actual damages~~  
 27           ~~as a direct and proximate result of Defendants' misrepresentations and concealment of and failure~~  
 28           ~~to disclose material information. Defendants had an ongoing duty to all their customers to refrain~~

1 ~~from unfair and deceptive practices under the West Virginia CCPA. All owners of Class Vehicles~~  
 2 ~~suffered ascertainable loss as a result of Defendants' deceptive and unfair acts and practices made~~  
 3 ~~in the course of Defendants' business.~~

4 ~~14. Pursuant to W. Va. Code § 46A-6-106(a), the West Virginia State Class seeks an~~  
 5 ~~order enjoining Defendants' unfair and/or deceptive acts or practices, damages, punitive damages,~~  
 6 ~~and any other just and proper relief available under the West Virginia CCPA.~~

7 ~~15. Pursuant to W. Va. Code § 46A-6-106(b), Plaintiffs sent notice letters to~~  
 8 ~~Defendants. The West Virginia State Class seeks all damages and relief to which it is entitled.~~

9 **WEST VIRGINIA COUNT II:**  
 10 **West Virginia Lemon Law**  
 11 **W. Va. Code § 46A-6A-1 et seq.**  
 12 **(On Behalf of the West Virginia State Class)**

13 ~~16. Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set~~  
 14 ~~forth herein.~~

15 ~~17. Plaintiff John Hickey (for the purposes of this count, "Plaintiff") brings this claim~~  
 16 ~~on behalf of himself and the West Virginia State Class against all Defendants.~~

17 ~~18. West Virginia State Class members who purchased or leased the Class Vehicles in~~  
 18 ~~West Virginia are "consumers" within the meaning of W. Va. Code § 46A-6A-2(1).~~

19 ~~19. Defendants are "manufacturer[s]" of the Class Vehicles within the meaning of W.~~  
 20 ~~Va. Code § 46A-6A-2(2).~~

21 ~~20. The Class Vehicles are "motor vehicles" as defined by W. Va. Code § 46A-6A-~~  
 22 ~~2(4).~~

23 ~~21. In connection with the purchase or lease of Class Vehicles, the Defendants~~  
 24 ~~provided Plaintiff and West Virginia State Class members with written express warranties~~  
 25 ~~covering the repair or replacement of components that are defective in materials or workmanship.~~

26 ~~22. Defendants' warranties formed the basis of the bargain that was reached when~~  
 27 ~~Plaintiff and West Virginia State Class members unknowingly purchased or leased Class Vehicles~~  
 28 ~~that came equipped with the SDM Calibration Defect.~~

1           ~~23.—However, Defendants knew or should have known that the warranties were false~~  
2           ~~and/or misleading. Specifically, Defendants were aware of the SDM Calibration Defect in the~~  
3           ~~Class Vehicles, which made the vehicles inherently defective and dangerous at the time that they~~  
4           ~~were sold and leased to Plaintiff and West Virginia State Class members.~~

5           ~~24.—Plaintiff and West Virginia State Class members reasonably relied on the~~  
6           ~~Defendants' express warranties when purchasing or leasing their Class Vehicles.~~

7           ~~25.—Defendants knowingly breached their express warranties to repair defects in~~  
8           ~~materials and workmanship by failing to repair the SDM Calibration Defect in the Class Vehicles.~~  
9           ~~Defendants also breached their express warranties by providing a product containing defects that~~  
10           ~~were never disclosed to Plaintiff and West Virginia State Class members.~~

11           ~~26.—Pursuant to W.Va. Code §§ 46A-6A-3(a) and 5(c), Plaintiffs have sent notice~~  
12           ~~letters to Defendants.~~

13           ~~27.—As a direct and proximate result of the Defendants' breaches of their duties under~~  
14           ~~West Virginia's Lemon Law, West Virginia State Class members received goods whose defect~~  
15           ~~substantially impairs their value. The West Virginia State Class has been damaged by the~~  
16           ~~diminished market value of the vehicles along with the compromised functioning and/or non-use~~  
17           ~~of their Class Vehicles.~~

18           ~~28.—Defendants have a duty under § 46A-6A-3 to make all repairs necessary to correct~~  
19           ~~the defect herein described to bring the Class Vehicles into conformity with all written warranties.~~  
20           ~~In the event that Defendants cannot affect such repairs, they have a duty to replace each Class~~  
21           ~~Vehicle with a comparable new motor vehicle that conforms to the warranty.~~

22           ~~29.—As a result of Defendants' breaches, Plaintiff and the West Virginia State Class are~~  
23           ~~entitled to the following:~~

24                   ~~A.—Revocation of acceptance and refund of the purchase price, including, but~~  
25                   ~~not limited to, sales tax, license and registration fees, and other reasonable expenses~~  
26                   ~~incurred for the purchase of the new motor vehicle, or if there be no such revocation of~~  
27                   ~~acceptance, damages for diminished value of the motor vehicle;~~  
28

~~B.——Damages for the cost of repairs reasonably required to conform the motor vehicle to the express warranty;~~

~~C.——Damages for the loss of use, annoyance or inconvenience resulting from the nonconformity, including, but not limited to, reasonable expenses incurred for replacement transportation during any period when the vehicle is out of service by reason of the nonconformity or by reason of repair; and~~

~~D.——Reasonable attorney fees.~~

**WEST VIRGINIA COUNT III:  
Breach of Express Warranty  
W. Va. Code §§ 46-2-313 and 46-2A-210  
(On Behalf of the West Virginia State Class)**

~~30.——Plaintiffs re-allege and incorporate by reference all preceding allegations as though fully set forth herein.~~

~~31.——Plaintiff John Hickey (for the purposes of this count, “Plaintiff”) brings this claim on behalf of himself and the West Virginia State Class against all Defendants.~~

~~32.——Defendants are and were at all relevant times “merchant[s]” with respect to motor vehicles under W. Va. Code § 46-2-104(1) and 46-2A-103(1)(t), and “sellers” of motor vehicles under § 46-2-103(1)(d).~~

~~33.——With respect to leases, Defendants are and were at all relevant times “lessors” of motor vehicles under W. Va. Code § 46-2A-103(1)(p).~~

~~34.——The Class Vehicles are and were at all relevant times “goods” within the meaning of W. Va. Code §§ 46-2-105(1) and 46-2A-103(1)(h).~~

~~35.——In connection with the purchase or lease of Class Vehicles, the Defendants provided Plaintiff and West Virginia State Class members with written express warranties covering the repair or replacement of components that are defective in materials or workmanship.~~

~~36.——Defendants’ warranties formed the basis of the bargain that was reached when Plaintiff and West Virginia State Class members unknowingly purchased or leased Class Vehicles that came equipped with the SDM Calibration Defect.~~



37. — However, Defendants knew or should have known that the warranties were false and/or misleading. Specifically, Defendants were aware of the SDM Calibration Defect in the Class Vehicles, which made the vehicles inherently defective and dangerous at the time that they were sold and leased to Plaintiff and West Virginia State Class members.

38. — Plaintiff and West Virginia State Class members reasonably relied on the Defendants' express warranties when purchasing or leasing their Class Vehicles.

39. — Defendants knowingly breached their express warranties to repair defects in materials and workmanship by failing to repair the SDM Calibration Defect in the Class Vehicles. Defendants also breached their express warranties by providing a product containing defects that were never disclosed to Plaintiff and West Virginia State Class members.

40. — Plaintiff and West Virginia State Class members have provided the Defendants with reasonable notice and opportunity to cure the breaches of their express warranties by way of letter sent by Plaintiffs on August 20, 2021. Defendants are further on notice due to numerous public NHTSA complaints and individual lawsuits, as detailed herein.

41. — Alternatively, any opportunity to cure the breach is unnecessary and futile.

42. — As a direct and proximate result of the Defendants' breach of express warranties, Plaintiff and West Virginia State Class members have been damaged in an amount to be proven at trial.

**WEST VIRGINIA COUNT IV:  
Breach of Implied Warranty of Merchantability  
W. Va. Code §§ 46-2-314 and 46-2A-212  
(On Behalf of the West Virginia State Class)**

43. — Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set forth herein.

44. — Plaintiff John Hickey (for the purposes of this count, "Plaintiff") bring this claim on behalf of himself and the West Virginia State Class against all Defendants.

45. — Defendants are and were at all relevant times "merchant[s]" with respect to motor vehicles under W. Va. Code §§ 46-2-104(1) and 46-2A-103(1)(t), and "sellers" of motor vehicles under § 46-2-103(1)(d).

46. ~~With respect to leases, Defendants are and were at all relevant times “lessors” of motor vehicles under W. Va. Code § 46-2A-103(1)(p).~~

47. ~~The Class Vehicles are and were at all relevant times “goods” within the meaning of W. Va. Code §§ 46-2-105(1) and 46-2A-103(1)(h).~~

48. ~~A warranty that the Class Vehicles were in merchantable condition and fit for the ordinary purpose for which vehicles are used is implied by law pursuant to W. Va. Code §§ 46-2-314 and 46-2A-212.~~

49. ~~The Class Vehicles did not comply with the implied warranty of merchantability because, at the time of sale and at all times thereafter, they were defective and not in merchantable condition, would not pass without objection in the trade, and were not fit for the ordinary purpose for which vehicles were used. Specifically, the Class Vehicles suffer from the SDM Calibration Defect, which may cause the airbags and seatbelt to fail to deploy during an accident, rendering the Class Vehicles inherently defective and dangerous.~~

50. ~~Defendants were provided reasonable notice of these issues by way of a letter sent by Plaintiffs on August 20, 2021.~~

51. ~~Alternatively, any opportunity to cure the breach is unnecessary and futile.~~

52. ~~As a direct and proximate result of Defendants’ breach of the implied warranty of merchantability, Plaintiff and West Virginia State Class members have been damaged in an amount to be proven at trial.~~

### **34. ~~Wisconsin~~**

#### **~~WISCONSIN COUNT I:~~**

#### **~~Violations of the Wisconsin Deceptive Trade Practices Act~~**

#### **~~Wis. Stat. § 100.18 et seq.~~**

#### **~~(On Behalf of the Wisconsin State Class)~~**

1. ~~Plaintiffs incorporate by reference all allegations in this Complaint as though fully set forth herein.~~

2. ~~Plaintiff Greg Douthwaite (for the purposes of this count, “Plaintiff”) brings this claim on behalf of himself and the Wisconsin State Class against all Defendants.~~

1           3. ~~Wisconsin State Class members are “persons” and members of “the public” under~~  
2 ~~the Wisconsin Deceptive Trade Practices Act (“Wisconsin DTPA”), Wis. Stat. § 100.18(1).~~  
3 ~~Wisconsin State Class members purchased or leased one or more Class Vehicles.~~

4           4. ~~Defendants are “person[s], firm[s], corporation[s] or association[s]” within the~~  
5 ~~meaning of Wis. Stat. § 100.18(1).~~

6           5. ~~The Wisconsin DTPA makes unlawful any “representation or statement of fact~~  
7 ~~which is untrue, deceptive or misleading.” Wis. Stat. § 100.18(1).~~

8           6. ~~In the course of their business, Defendants violated the Wisconsin DTPA by~~  
9 ~~knowingly and intentionally misrepresenting, omitting, concealing, and/or failing to disclose~~  
10 ~~material facts regarding the reliability, safety, and performance of the Class Vehicles, as detailed~~  
11 ~~above.~~

12           7. ~~Specifically, by misrepresenting the Class Vehicles as safe and/or free from~~  
13 ~~defects, and by failing to disclose and actively concealing the dangers and risk posed by the Class~~  
14 ~~Vehicles and/or the SDM Calibration Defect, Defendants engaged in unfair methods of~~  
15 ~~competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the~~  
16 ~~conduct of any trade or commerce, as prohibited by Wis. Stat. § 100.18(1).~~

17           8. ~~Defendants’ unfair or deceptive acts or practices, including misrepresentations,~~  
18 ~~concealments, omissions, and/or suppressions of material facts, had a tendency or capacity to~~  
19 ~~mislead and create a false impression in consumers, and were likely to and did in fact deceive~~  
20 ~~reasonable consumers, including Plaintiff and Wisconsin State Class members, about the true~~  
21 ~~safety and reliability of Class Vehicles, the quality of the Class Vehicles, and the true value of the~~  
22 ~~Class Vehicles.~~

23           9. ~~Defendants’ scheme and concealment of the SDM Calibration Defect and true~~  
24 ~~characteristics of the passenger safety systems in the Class Vehicles were material to Plaintiff and~~  
25 ~~Wisconsin State Class members, as the Defendants intended. Had they known the truth, Plaintiff~~  
26 ~~and Wisconsin State Class members would not have purchased or leased the Class Vehicles, or~~  
27 ~~would have paid significantly less for them.~~

1           ~~10.—Plaintiff and Wisconsin State Class members had no way of discerning that~~  
2           ~~Defendants’ representations were false and misleading and/or otherwise learning the facts that~~  
3           ~~Defendants had concealed or failed to disclose. Plaintiff and Wisconsin State Class members did~~  
4           ~~not, and could not, unravel Defendants’ deception on their own.~~

5           ~~11.—Defendants had an ongoing duty to Plaintiff and Wisconsin State Class members~~  
6           ~~to refrain from unfair or deceptive practices under the Wisconsin DTPA in the course of their~~  
7           ~~business. Specifically, Defendants owed Plaintiff and Wisconsin State Class members a duty to~~  
8           ~~disclose all the material facts concerning the SDM Calibration Defect in the Class Vehicles~~  
9           ~~because they possessed exclusive knowledge, they intentionally concealed the defect from~~  
10           ~~Plaintiff and Wisconsin State Class members, and/or they made misrepresentations that were~~  
11           ~~misleading because they were contradicted by withheld facts.~~

12           ~~12.—Defendants’ violations present a continuing risk to Plaintiff and Wisconsin State~~  
13           ~~Class members, as well as to the general public. Defendants’ unlawful acts and practices~~  
14           ~~complained of herein affect the public interest.~~

15           ~~13.—Wisconsin State Class members suffered ascertainable loss and actual damages as~~  
16           ~~a direct and proximate result of Defendants’ misrepresentations and concealment of and failure to~~  
17           ~~disclose material information. Defendants had an ongoing duty to all their customers to refrain~~  
18           ~~from unfair and deceptive practices under the Wisconsin DTPA. All owners of Class Vehicles~~  
19           ~~suffered ascertainable loss as a result of Defendants’ deceptive and unfair acts and practices made~~  
20           ~~in the course of Defendants’ business.~~

21           ~~14.—As a direct and proximate result of Defendants’ violations of the Wisconsin~~  
22           ~~DTPA, the Wisconsin State Class have suffered injury in fact and/or actual damage.~~

23           ~~15.—The Wisconsin State Class seeks damages, court costs and attorneys’ fees under~~  
24           ~~Wis. Stat. § 100.18(11)(b)(2), and any other just and proper relief available under the Wisconsin~~  
25           ~~DTPA.~~

**~~WISCONSIN COUNT II:  
Breach of Express Warranty  
Wis. Stat. §§ 402.313 and 411.210  
(On Behalf of the Wisconsin State Class)~~**

~~16. Plaintiffs re-allege and incorporate by reference all preceding allegations as though fully set forth herein.~~

~~17. Plaintiff Greg Douthwaite (for the purposes of this count, “Plaintiff”) brings this claim on behalf of himself and the Wisconsin State Class against all Defendants.~~

~~18. Defendants are and were at all relevant times “merchant[s]” with respect to motor vehicles under Wis. Stat. §§ 402.104(3) and 411.103(1)(t), and “sellers” of motor vehicles under § 402.103(1)(d).~~

~~19. With respect to leases, Defendants are and were at all relevant times “lessors” of motor vehicles under Wis. Stat. § 411.103(1)(p).~~

~~20. The Class Vehicles are and were at all relevant times “goods” within the meaning of Wis. Stat. §§ 402.105(1)(c) and 411.103(1)(h).~~

~~21. In connection with the purchase or lease of Class Vehicles, the Defendants provided Plaintiff and Wisconsin State Class members with written express warranties covering the repair or replacement of components that are defective in materials or workmanship.~~

~~22. Defendants’ warranties formed the basis of the bargain that was reached when Plaintiff and Wisconsin State Class members unknowingly purchased or leased Class Vehicles that came equipped with the SDM Calibration Defect.~~

~~23. However, Defendants knew or should have known that the warranties were false and/or misleading. Specifically, Defendants were aware of the SDM Calibration Defect in the Class Vehicles, which made the vehicles inherently defective and dangerous at the time that they were sold and leased to Plaintiff and Wisconsin State Class members.~~

~~24. Plaintiff and Wisconsin State Class members reasonably relied on the Defendants’ express warranties when purchasing or leasing their Class Vehicles.~~

~~25. Defendants knowingly breached their express warranties to repair defects in materials and workmanship by failing to repair the SDM Calibration Defect in the Class Vehicles.~~

~~Defendants also breached their express warranties by providing a product containing defects that were never disclosed to Plaintiff and Wisconsin State Class members.~~

~~26.—Plaintiff and Wisconsin State Class members have provided the Defendants with reasonable notice and opportunity to cure the breaches of their express warranties by way of letter sent by Plaintiffs on August 20, 2021. Defendants are further on notice due to numerous public NHTSA complaints and individual lawsuits, as detailed herein.~~

~~27.—Alternatively, any opportunity to cure the breach is unnecessary and futile.~~

~~28.—As a direct and proximate result of the Defendants’ breach of express warranties, Plaintiff and Wisconsin State Class members have been damaged in an amount to be proven at trial.~~

**WISCONSIN COUNT III:  
Breach of Implied Warranty of Merchantability  
Wis. Stat. §§ 402.314 and 411.212  
(On Behalf of the Wisconsin State Class)**

~~29.—Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set forth herein.~~

~~30.—Plaintiff Greg Douthwaite (for the purposes of this count, “Plaintiff”) brings this claim on behalf of himself and the Wisconsin State Class against all Defendants.~~

~~31.—Defendants are and were at all relevant times “merchant[s]” with respect to motor vehicles under Wis. Stat. §§ 402.104(3) and 411.103(1)(t), and “sellers” of motor vehicles under § 402.103(1)(d).~~

~~32.—With respect to leases, Defendants are and were at all relevant times “lessors” of motor vehicles under Wis. Stat. § 411.103(1)(p).~~

~~33.—The Class Vehicles are and were at all relevant times “goods” within the meaning of Wis. Stat. §§ 402.105(1)(c) and 411.103(1)(h).~~

~~34.—A warranty that the Class Vehicles were in merchantable condition and fit for the ordinary purpose for which vehicles are used is implied by law pursuant to Wis. Stat. §§ 402.314 and 411.212.~~

~~35.—The Class Vehicles did not comply with the implied warranty of merchantability because, at the time of sale and at all times thereafter, they were defective and not in merchantable condition, would not pass without objection in the trade, and were not fit for the ordinary purpose for which vehicles were used. Specifically, the Class Vehicles suffer from the SDM Calibration Defect, which may cause the airbags and seatbelt to fail to deploy during an accident, rendering the Class Vehicles inherently defective and dangerous.~~

~~36.—Defendants were provided reasonable notice of these issues by way of a letter sent on August 20, 2021.~~

~~37.—Alternatively, any opportunity to cure the breach is unnecessary and futile.~~

~~38.—As a direct and proximate result of Defendants' breach of the implied warranty of merchantability, Plaintiff and Wisconsin State Class members have been damaged in an amount to be proven at trial.~~

### **VIII. PRAYER FOR RELIEF**

Plaintiffs, on behalf of ~~himself~~ themselves and all others similarly situated, ~~requests~~ request for the Court to enter judgment against the Defendants, as follows:

a. An order certifying the proposed Class~~(es)~~, designating Plaintiffs as the named representatives of the Class~~(es)~~, designating the undersigned as Class Counsel, and making such further orders for the protection of Class members as the Court deems appropriate, under Fed. R. Civ. P. 23;

b. An order enjoining the Defendants to desist from further deceptive distribution, sales, and lease practices with respect to the Class Vehicles and such other injunctive relief that the Court deems just and proper;

c. An award to Plaintiffs and Class Members of compensatory, exemplary, and punitive remedies and damages and statutory penalties, including interest, in an amount to be proven at trial;

d. A declaration that Defendants are financially responsible for all Class notice and the administration of Class relief;

- 1 e. Costs, restitution, and compensatory damages for economic loss and out-  
2 of-pocket costs, multiple damages under applicable states' laws, ~~and~~ punitive and exemplary  
3 damages under applicable law; and disgorgement, in an amount to be determined at trial;  
4 f. Any applicable statutory and civil penalties;  
5 g. An award of costs and attorneys' fees, as allowed by law;  
6 h. An order requiring Defendants to pay both pre- and post-judgment interest  
7 on any amounts awarded.  
8 i. Leave to amend this Complaint to conform to the evidence produced at  
9 trial; and  
10 j. Such other or further relief as the Court may deem appropriate, just, and  
11 equitable under the circumstances.

12 **IX. DEMAND FOR JURY TRIAL**

13 Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiffs demand a trial by jury of any  
14 and all issues in this action triable by a jury.  
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1 Dated: ~~October 26~~ January 27,  
2 ~~2021~~ 2023

Respectfully Submitted,

By: /s/ Nimish R. Desai

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